TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 140.

JOHN FOSTER, MICHAEL KASWORSKY, NARCISSE GUINCOCHIA, SALVADOR MENDEZ, PEDRO SERDUGO, JOHN WHITE, RICHARD BLACK, ET AL., PLAINTIFFS IN ERROR,

vs.

FRANCIS MORA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED AUGUST 28, 1876.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of California (ninth judicial circuit), greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you between John Foster, Michael Kasworsky, Narcisse Guincochia, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, plaintiffs in error, and Francis Mora, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the 100th.

The above writ of error is hereby allowed.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Attest, &c.:
[SEAL.]

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
D'y Clk.

The answer of the judges of the circuit court of the United States for the district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the Supreme Court of the United States of America within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court.

L. S. B. SAWYER,
Clk U. S. C. C. Cal.
By J. F. O'BEIRNE,
D'y Clk.

(Indorsed:) 770. United States Supreme Court. John Foster & al., pl'ffs in error, vs. Francis Mora, def't in error. Writ of error. Filed Nov'r 11, 1875. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'y cl'k.

b UNITED STATES OF AMERICA, *ss:*

To Francis Mora, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1876, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of California, wherein John Foster, Michael Kasworsky, Narcisse Guincochia, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 11th day of November, A. D. 1875, and of the Independence of the United States the 100th.

[SEAL.]

OGDEN HOFFMAN,
U. S. District Judge, Ninth Circuit.

(Indorsed:) 770. United States Supreme Court. John Foster et al., pl'ffs in error, vs. Francis Mora, def't in error. Citation.

Service of a correct copy of the within is this day admitted. November 11th, A. D. 1875.

DOYLE & BARBER,
Att'ys for Pl'ff in Error.

Filed Nov'r 11th, 1875.

L. S. B. SAWYER, *Clk*,
By J. F. O'BEIRNE, *D'y Clk.*

1 *Complaint.*

Circuit court of the United States for the district of California.

DISTRICT OF CALIFORNIA, *ss:*

FRANCIS MORA, PLAINTIFF,
vs.
JOHN FOSTER, MICHAEL KASWORSKY, Narcisse Guincochea, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, defendants.

Francis Mora, the plaintiff in this action, who is an alien, and a subject of the Kingdom of Spain, residing in the county of Los Angeles, in the district of California, complains of John Foster, Michael Kasworsky, Narcisse Guincochea, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet (the true names of which six last-named parties are unknown to said plaintiff), defendants in this action, all of whom are citizens of the State of California, and of the United States, residing in the
2 said county of Los Angeles, and shows that on the eighteenth day of March, A. D. 1865, he, the plaintiff, was possessed of the fol-

lowing described premises, within the county of Los Angeles, in said district, to wit:

All that certain tract, piece, or parcel of land situate, lying, and being in said county of Los Angeles, known as the Mission of "San Juan Capistrano," embraced and described in the final survey of the said premises annexed to and being part of the patent of the United States, dated the eighteenth day of March, A. D. 1865, and issued to Joseph S. Alemany, Bishop of Monterey, and his successsors, as tract "No. one" of the Mission "San Juan Capistrano," as follows:

Beginning at a pillar ten links square at the base, at the re-entering angle, joining the west wing of the main body of the church building, at the southeast corner of the same; thence according to the true meridian, the variation of the magnetic needle being thirteen degrees thirty minutes east, south four degrees thirty minutes west, one chain and seventy-five links, to a rock eighteen inches long, fifteen inches wide, and five inches thick, station, at the southwest corner of the fallen wall of the central portion of the church buildings; thence south eighty-five
3 degrees thirty minutes east, fifty-six links, to a rock eighteen inches long, fifteen inches wide, and five inches thick, station, at the southeast corner of the fallen wall of the central portion of the church buildings; thence north four degrees thirty minutes east, one chain and seventy-five links, to a pillar in the re-entering angle of the central portion of the church at its eastern wing, station; thence south eighty-five degrees thirty minutes east, ten links to the southeast corner of the pillar, station; thence north four degrees thirty minutes east, ten links, to station at the east wing of the church; thence south eighty-five degrees thirty minutes east, thirty-two links, to station at the southeast corner of the east wing of the church; thence north four degrees thirty minutes east, fifty-five links, to station at the northeast corner of the church; thence north eighty-five degrees thirty minutes west, thirty-two links, to station at the main body of the church; thence north five degrees fifteen minutes east, twenty links, to station; thence north nineteen degrees fifteen minutes west, twenty-nine links, to station at the northeast corner of the rear and main body of the church; thence along the cemetery wall north three degrees thirty minutes east, three chains and twenty-two links, to the northeast corner of same station; thence north
4 forty-nine degrees fifteen minutes west, one chain and twenty-seven links to the northeast corner of a row of buildings, extending to the west, which forms the northern side of a row of buildings, forty-five links wide, surrounding a court yard on the west of the cemetery and church, station; thence leaving the northwest corner of the cemetery and along the ruins of a row of old buildings on the west, north twenty-three degrees thirty minutes west, three chains and seventeen links to station at the northeast corner of ruins; thence south eighty-six degrees thirty minutes west, along old ruins to the south of line four chains and thirty-four links, to a point from which an interior garden wall extends south two degrees thirty minutes west, nine chains and sixty links, to station at the northwest corner of the garden; thence south five degrees east, four chains and thirty-seven links, to an angle in the western adobe wall of garden, station; thence south forty-five minutes west, one chain and seventy-eight links, to station at an angle of garden wall; thence south eight degrees west, two chains and forty-one links, to station at an angle of garden wall; thence south seventy-one degrees thirty minutes east, one chain and twenty links, to station at an angle of garden wall; thence

south fourteen degrees thirty minutes east, forty-seven links,
5 to end of garden wall two chains and fifty-eight links to a post, station; thence across the garden, north eighty-four degrees east, two chains and sixty-seven links to the rear of old buildings, bearing north one degree west, five chains and sixty-seven links, to a post and charred stake in mound of rocks, station, at the east front of a range of buildings; thence north two degrees west, one chain and thirty-four links, to a recess in an old building; at two chains and thirty-four links leaves same, and along the eastern front of Bandini's house four chains and thirty-two links, to a row of buildings forming the south side of the court-yard, station; thence south eighty-five degrees thirty minutes east, one chain and twenty-nine links, to the court yard, thirty-one links wide, two chains and fifty links, to station at a corridor in front of dwelling; thence south five degrees thirty minutes west, seventy-four links, to station at the southwest corner of corridor; thence south eighty-four degrees thirty minutes east, one chain and seventeen links, to station at an angle in the west wing of the church; thence south four degrees thirty minutes west, ten links, to station; and thence south eighty-five degrees thirty minutes east, ten links, to the point of beginning, containing ten acres and sixty-two hundredths
6 of an acre, and being designated upon the plats of the public surveys as lots numbered thirty-seven, in township eight south of range eight west of the San Bernardino meridian.

The tract of land designated as "Tract No. two," bounded and described as follows, to wit: Beginning at a sandstone rock eighteen inches long, fifteen inches wide, and five inches thick, from which the end of course "No. 11" of tract "number one," bears south eleven degrees east, distant twelve chains and seventy-five links; thence north nine degrees thirty minutes east one chain and fifty-four links, to a stake, station, and northeast corner of this tract; thence north eighty degrees thirty minutes west, one chain and thirty links, to a stake, station; thence south nine degrees thirty minutes west, one chain and fifty-four links, to a rock twenty-eight inches long, eighteen inches wide, and eight inches thick, station, and southwest corner of tract number two; and thence south eighty degrees thirty minutes east, one chain and thirty links, to the point of beginning, containing twenty hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered thirty-eight, in township eight south, of range eight west of the San Bernardino meridian.

7 The tract of land designated as tract number three, bounded and described as follows, to wit:

Beginning at the stake placed for station number two of tract number two; thence north sixty-six degrees thirty minutes east, two chains and forty-five links, to a stake, station, and southeast corner of tract number three; thence north twenty-three degrees thirty minutes west, two chains and fifty-six links, to a stake, station, and northeast corner of tract number three; thence south sixty-six degrees thirty minutes west, two chains and forty-five links, to a stake, station, and northwest corner of tract number three; and thence south twenty-three degrees thirty minutes east, two chains and fifty-six links to the point of beginning, containing sixty-three hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered thirty-nine, in township eight south, of range eight west of the San Bernardino meridian.

The tract of land designated as tract number four, bounded and described as follows, to wit:

Beginning at a stake at the southwest corner of the orchard of the

Mission, from which the end of course number seven, of tract num-
8 ber one, bears north thirty-nine degrees thirty minutes west, distant four chains and twenty-two links; thence north four chains and fifty-two links, to a stake at the northwest corner of the adobe wall of orchard, station; thence along said adobe wall, south eighty-five degrees thirty minutes east, six chains, to a stake at the northeast corner of orchard, station, from which an olive tree twenty-four inches in diameter bears south fifty-five degrees thirty minutes west, distant forty-six links, and an olive tree ten inches in diameter bears south twelve degrees thirty minutes east, distant fifty links; thence south eight degrees thirty minutes east, five chains and two links, to a stake, station, and southeast corner of the orchard, from which an olive tree fourteen inches in diameter bears north eighteen degrees thirty minutes west, distant one chain and three links, and an olive tree fourteen inches in diameter bears north sixty degrees thirty minutes west, distant eighty links; and thence north eighty-one degrees thirty minutes west, six chains and eighty links, to the point of beginning, containing two acres and ninety-nine hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered forty, in township eight south, of
9 range eight west of the San Bernardino meridian.

The tract designated as tract number five, bounded and described as follows, to wit:

Beginning at the northwest corner of said tract, being the tract containing an orchard and vineyard, from which the southeast corner of tract "number four" bears north fifty-nine degrees west, distant four chains and seventy-three links; thence along adobe wall of same, south fifty-eight degrees thirty minutes east, nine chains and thirteen links, to an angle in adobe wall, station; thence south forty-two degrees thirty minutes east, four chains and fifty-six links, to an angle in adobe wall, station, and northeast corner of the tract above mentioned; thence south forty degrees thirty minutes west, nineteen chains and six links, to a post and charred stake at intersection with the west boundary of section seven, township eight south, of range seven west, four chains and sixty-seven links, south of corner to sections one, six, seven, and twelve, twenty-four chains and forty-three links to station at the southeast corner of the wall of the vineyard; thence north thirty-seven degrees forty-five minutes west, eight chains and twenty-five links, to an avenue of olive trees eight feet wide, course north, thirty-seven degrees thirty
10 minutes east, twelve chains and eighty-one links, to the southwest corner of the adobe wall of the orchard, station; and thence north thirty-seven degrees thirty minutes east, twenty chains and seventy links, to the point of beginning; containing twenty-nine acres and ninety-six-hundredths of an acre, and being designated upon the plats of the public survey as lot numbered thirty-eight, in township eight south, of range seven west, and lot numbered forty-one, in township eight south, of range eight west of the San Bernardino meridian.

That the said plaintiff, being so possessed, the defendants afterwards, to wit, on the twentieth day of March, A. D. 1865, unlawfully entered into said premises and ousted the plaintiff therefrom, and unlawfully withhold from him the possession thereof, to his damage two thousand dollars. That the yearly value of the rents and profits of said land and premises is five hundred dollars.

Wherefore the plaintiff demands judgment against the defendants for

the possession of said land and premises and the value of the
11 rents and profits, as aforesaid, with his damages and costs.

WILLIAM H. L. BARNES,
Plaintiff's Attorney.

(Endorsed:) Filed January 15, 1869. Geo. E. Whitney, clerk, by H. F. Lardner, D. C.

12 *Summons.*

UNITED STATES OF AMERICA.

In the circuit court of the United States in and for the district of California.

Action brought in the said circuit court and the complaint filed in the office of the clerk of said circuit court, in the city of San Francisco.

FRANCIS MORA, PLAINTIFF,
vs.
JOHN FOSTER ET AL., DEFENDANTS.

The President of the United States of America, to John Foster, Michael Kasworsky, Narcisse Guincochia, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States for the district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this
13 summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days (exclusive of Sundays and day of service) after the service on you of this summons, if served in this county, or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to obtain a judgment against you for the possession of certain lands and premises situated in said district, and particularly described in said complaint, together with damages alleged to have been sustained by the plaintiff for the unlawful withholding thereof, and for the loss of the value of the rents and profits thereof, together with costs of suit. And if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third.

14 [SEAL.]

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *D. C.*

(Endorsed:)

I, Joseph Mut, deputy marshal of the United States for the district of California, do hereby certify that I served the within summons on the defendant, John Foster, by delivering to and leaving with him a true copy of the summons and complaint, in the county of San Diego, and

district aforesaid, and at the same time showing to him the original summons under the seal of this court, on the 13th day of March, A. D. 1869.

JOSEPH MUT,
Deputy Marshal.

And I also certify that I served the within summons on the defendants hereby specified, to wit, Michael Kaswarsky, Narsise Guinecochea, Salvador Mendez, Pedro Verduga, and Mariadé Jesus Serrano, in the county of Los Angeles, and on the 15th day of March, A. D. 1869, by delivering and leaving with each of them a true copy of the summons, and a copy of the complaint annexed to it, and at the same time
15 showing to each of them the original summons under seal of this court.

San Juan Capistrano, Los Angeles County, California, March 15th, A. D. 1869.

JOSEPH MUT,
Deputy Marshal.

After due diligence I have been unable to find any other of the defendants mentioned in this returns, and I have no idea of any other except those reported on these returns.

JOSEPH MUT.

U. S. MARSHAL'S OFFICE,
District of California.

I hereby certify that I received the within summons on the 23d day of March, A. D. 1869, and personally served the same on the same day, March 23d, A. D. 1869, by delivering to L. L. Robinson, attorney in fact for F. L. A. Pioche, as John Black, said defendant personally, in the city and county of San Francisco, in said district, a copy of said summons attached to a certified copy of the complaint.

San Francisco, March 23d, 1869.

CHARLES W. RAND,
U. S. Marshal,
By A. C. TAYLOR, *Deputy.*

16 (Indorsed:) Filed March 30, 1869. Geo. E. Whitney, clerk, by C. W. Grant, dep'y.

17 *Answer.*

In the circuit court of the United States for the district of California.

FRANCIS MORA
vs.
JOHN FOSTER ET AL.

And now comes the defendants in the above-entitled action, and for answer to the complaint of plaintiff herein, deny generally and specifically each and every, all and singular the allegations in said complaint contained.

Further answering defendants allege that one F. L. A. Pioche was at the time of the commencement of this action, and at the time of the pretended ouster in said complaint alleged, and for a long time previous thereto, and since then continuously has been and still is the owner in

fee simple and entitled to the possession of, and was and is in the lawful possession of the whole of the said premises in said complaint described. And these defendants are in possession of said premises, and holding the same as the tenants of the said Pioche.

And for a further and separate defence to the plaintiff's com-
18 plaint this defendant avers that the plaintiff ought not to have or maintain his action herein, because neither the plaintiff, his ancestor, predecessor, nor grantor was seized or possessed of the premises described in the complaint, nor of any part thereof within five years before the commencement of this action.

And for a further and separate defence to the plaintiff's complaint, this defendant avers that the plaintiff ought not to have or maintain his action herein, because neither the plaintiff nor the person under whose pretended title this action is prosecuted, nor the ancestor, predecessor, nor grantor of such person was seized or possessed of the premises described in the complaint, nor of any part thereof, within five years before the commencement of this action.

Wherefore defendants pray to be hence dismissed with their costs.

JOHN B. FELTON,
Attorney for Defendants.

(Endorsed :)

Service of a copy of the within answer admitted August 6, 1869.

W. H. L. BARNES,
Att'y for Pl'ff.

Filed Aug. 6, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y.*

Findings.

19 In the circuit court of the United States, in and for the district of California.

FRANCIS MORA
vs.
JOHN FOSTER ET AL.

The court finds as a matter of fact:

I. The lands in controversy are the ancient mission buildings and quadrangle, and the gardens and orchards of the ancient Mission of San Juan Capistrano, as formerly occupied by the priests of the mission; area, forty-six acres and seventy-four hundredths of an acre ($46\frac{74}{100}$).

II. That on the 19th day of February, A. D. 1853, Joseph S. Alemany, Roman Catholic bishop of Monterey, filed with the board of commissioners to ascertain and settle private land claims in California, appointed under the act of Congress of March 3d, 1851, his petition in writing, a copy of which (omitting the description of the several parcels
of land therein described and claimed) is hereto annexed and
20 made part hereof, and marked "Schedule A," and thereupon such proceedings were had before the said board, that the said board, on the 18th of December, A. D. 1855, made a decree confirming to said petitioner the lands described in his petition, to be held by him for the uses and purposes in said petition described. A copy of the decree (omitting the description of the several parcels of land) is hereto annexed and made part hereof, marked "Schedule B." That afterwards, the United States appealed from the said decree to the district court of

the United States for the southern district of the State of California, and thereafter the Attorney-General of the United States, having given notice that he would not prosecute such appeal, the same was thereupon, afterwards, on the 15th day of March, A. D. 1858, at a regular term of the said court, by its order duly entered, dismissed, and the said Joseph S. Alemany, bishop as aforesaid, was adjudged and decreed to have leave to proceed in the premises under the decree of the land commissioners as under final decree.

III. That on the 18th day of March, A. D. 1865, letters patent
21 were duly issued by the United States of America to the said Reverend Joseph S. Alemany, bishop aforesaid, a copy whereof is annexed, and made a part hereof, marked "Schedule C."

IV. Afterwards, and before the commencement of this suit, the title of the said Joseph S. Alemany, Roman Catholic bishop as aforesaid, to the said premises became vested in the plaintiff herein, and that they are the same premises described in the complaint and here in controversy.

V. That on the sixth day of December, 1845, Pio Pico, being then governor of the province of Upper California, executed and delivered to Santiago McKinley and the defendant Foster a grant of the premises in controversy, a correct translation of which from the Spanish into the English language is hereto appended, marked "D." And that afterwards, and prior to the commencement of this action, the said McKinley, by proper mesne conveyances, conveyed all his interest in and to the premises in controversy to the defendant Foster.

VI. That on the 23d day of October, 1852, the defendant Foster presented to the board aforesaid a petition in writing demanding
22 confirmation to him of the lands in controversy herein.

VII. That on the 7th day of July, 1855, the said board made a decree confirming to said Foster the lands in controversy.

VIII. That afterwards the claim of the said Foster, so ascertained by said decree, was appealed to the district court of the United States, and that in the said court, at a regular term thereof, the said appeal by the said United States was by appropriate proceedings dismissed, and it was, by the said court, adjudged that the said Foster should have leave to proceed as under final decree.

IX. That a survey of the lands aforesaid, so claimed by said Foster, and being the lands in dispute, and including all of them described in the complaint, excepting, however, an apartment designated by the U. S. surveyor general as a consistorial, another so designated as a curate's house, another so designated as a school-house, and another as a prison, was duly made by the proper officer of the United States acting in that behalf, and finally confirmed by the U. S. surveyor general of California.

23 X. That the defendants were, when this action was commenced, in the possession of all the premises described in the complaint, except the said consistorial, curate's house, school-house, and prison.

XI. That the yearly value of the rents and profits of the demanded said premises is two hundred and fifty dollars ($250) per year in gold coin of the United States.

And as conclusion of law from the foregoing facts, the court finds that the plaintiff is entitled to a judgment against the said defendants for the possession of the premises described in the complaint and for one dollar damages and the costs of suit.

(Signed) LORENZO SAWYER,
Circuit Judge.

24 SCHEDULE A.

To the United States commissioners for ascertaining and settling private land claims in the State of California:

The petition and claim of Joseph Sadoc Alemany, Roman Catholic bishop of the diocese of Monterey, in the State of California, a corporation sole, respectfully shows:

That the Roman Catholic Church in the State of California, of which your petitioner is bishop, under the title of Bishop of Monterey, and which consists of your petitioner, as such bishop, the various Roman Catholic parish priests, and Catholic congregations and people in the said State, is the owner of and entitled to various parcels of real estate situated within the said State, appropriated to the uses of religion and to the public worship of God, and herein designated as church lands or church property.

That the government of the Catholic Church in California, prior to its conquest by and cession to the United States, was vested in the Roman Catholic bishop of California; that the territorial limits of your petitioner's diocese of Monterey, and over which his jurisdiction extends, are the same as those of the former Mexican bishoprick of Cali-
25 fornia, and includes the whole State of California; and that your petitioner is the lawful successor of the late Right Rev'd Francisco Garcia Diego, the late Catholic bishop of the diocese of California, as the same existed under the former government of this State.

Your petitioner further shows that by the fundamental law of the Republic of Mexico, which was in force in the present State of California at the time of its conquest by and cession to the United States, the Roman Catholic Church, being the religion of all the people of Mexico, was recognized as such, and, for the government of said church and its members in all ecclesiastical matters, and in all things relating to the acquisition, transmission, use, and disposal of property, real or personal, belonging to the church, or devoted or appropriated to religious purposes or uses or to the service of God, the canon law of the Roman Catholic Church was adopted and recognized and was in force as the law of the Republic of Mexico, as it had also been of the Kingdom of Spain whilst Mexico was a dependency thereof.

Your petitioner further shows that by the laws of Spain, from time immemorial, and by the laws of the Republic of Mexico in
26 force at the time of the cession of California to the United States, it was not necessary that any grant of land for ecclesiastical or church purposes should be evidenced by any deed or writing, public or private, but the right of the church to the property devoted to religious purposes was always recognized as regulated by the said canon law.

Your petitioner further shows that the diocese of California, now called the diocese of Monterey, as aforesaid, was and is divided into twenty-one missions and fifteen parishes, and that the property of the church in the said diocese consisted of church edifices, houses for the use of the clergy and those employed in the service of the church, church-yards, burial-grounds, gardens, orchards, and vineyards, with the necessary buildings thereon and appurtenances, as hereinafter more particularly described, all of which were and are, although of very moderate value, necessary for the decent public worship of God, and the administration of the sacraments, and the sacrifice of the church, according to the rites, ritual, and ceremonial of the said Catholic Church, and that the same do not include what were termed mission lands
27 or mission ranchos, but were entirely distinct therefrom.

Your petitioner further shows that by the canon law aforesaid, and by the laws of Spain and Mexico, as the same were in force at the time of the cession of California to the United States, the title, control, and administration of all ecclesiastical or church property was vested in the hands of the bishop and clergy of the diocese within the territorial limits whereof the same was situated, and who for such purposes were regarded as a body corporate, the existence and succession of which was recognized by law, and the title, control, and administration of the church property in the Mexican province of California were vested in the bishop and clergy of said diocese of California, then attached to and forming part of the Catholic Church of Mexico.

That by the conquest of California by, and its cession to, the United States, the said diocese of California became attached to and made a part of the Catholic Church of the United States, which is under the government of a national synod of the ecclesiastical authorities thereof, periodically held in the city of Baltimore, in the State of Maryland.

28 That by the canon law, and by the statutes of the said national synod at Baltimore aforesaid, as the same are in force in the Catholic Church in the United States and formed the regulations and discipline thereof, the church property in the United States is, for motives of convenience, directed to be held by the various bishops of their several dioceses, and that a diocesan convention of the bishop and clergy of the said diocese of Monterey, held in the city of San Francisco, in the month of March, one thousand eight hundred and fifty-two, and at which the said missions and parishes were duly represented, it was for the purpose of conforming the administration of the temporalities of the Catholic Church in California to the system prevailing throughout the States of the American Union, and to the exigencies arising from the adoption of the State of California of the common law, with its system of land tenures, resolved unanimously that your petitioner as bishop of the diocese of Monterey, and on behalf of the Catholic Church and Catholic people of the State of California, and for the purpose of preserving the same to the sacred uses and purposes to which it has been dedicated, and for which it has heretofore been used, should

29 petition your honors for a confirmation to him and his successors of the aforesaid church property within the said State of California to be held by him and them in trust for the various religious uses and purposes to and for which it has been devoted.

Your petitioner further shows that for the purpose of being enabled to hold the said church property as aforesaid, and of administering the temporalities of the said church and managing the estate and property thereof, as required by the rules, regulations, and discipline of the said Roman Catholic Church, he has been duly incorporated as a sole corporation under and by virtue of the statute of the State of California, passed April 22, 1850, and amended May 4th, 1852, under the name and title of "Bishop of Monterey" as aforesaid.

Your petitioner further shows that the following is a list and description of the said property of the Catholic Church in this State, held by the title and tenure aforesaid, and which your petitioner as such corporation, and on behalf of himself and the Catholic population of California, claims in trust for the purposes aforesaid, viz:

30 (Here follows the description of the lands and buildings claimed at each of the missions, including those at the mission of San Juan Capistrano, the premises in controversy.)

Your petitioner further shows that the Catholic Church of California

had been at the time of the conquest and cession of California in actual and undisputed possession of the above described lands from about the periods hereinafter specified. And that such possession also constitutes one of the foundations of your petitioner's claim, viz: * * *

3rd. Of the church lands at the mission of San Juan Capistrano hereinbefore described, since about the year one thousand seven hundred and ninety-six, in which year said mission was established. * * *

Your petitioner also states that the former Mexican government of California after the conquest of the State by the United States, and after his authority had ceased to exist, is reported to have made various fraudulent grants of portions of the aforesaid lands, pretending that the same were public lands, and antedated the same so as to make them appear to have been issued before the conquest of the country.

That your petitioner is unacquainted with the particulars of such
31 fraudulent and pretended grants, and cannot state the name any further than that he has been informed (he knows not how truly) that the parties pretending to claim title under them to portions of said church lands are Andrew Pio Pico and Joseph A. Pico, John Foster, Manuel Poli, John Manzo, Richard S. Den, Daniel Hill, Joseph M. Coverubias, Joaquin Corillo, John B. Temple, John Wilson, Petronello Ruiz, Edward Clay, Beard & Co., Bolton & Barron, Gen. M. G. Ballejo; and that the vineyard at San Juan Bautista is in possession of Theofilo Echevaria, who, claiming to be alcalde in the year 1848, made a deed thereof conveying the same to himself, and took possession under the same.

Your petitioner further shows that all said pretended titles, even should they actually be what they respectively purport to be, are invalid, by reason that the lands were not public property and not within the power of the public authorities of Mexico to grant away, but the property of the Catholic Church, held by the bishop & clergy of the same for religious uses as hereinbefore particularly set forth.

Your petitioner therefore prays on behalf of himself and the clergy and people aforesaid a confirmation to himself and his successors
32 of the church lands aforesaid, to be held by him and them in trust for the religious purposes and uses to which the same have been respectively appropriated.

And your petitioner, &c.

BOTTS & EMMET,
CASSERLY & DOYLE,
Of Counsel.

33, 34 SCHEDULE B.

Decree.

JOSEPH S. ALEMANY, BISHOP, ETC.,
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid for the land hereinafter specifically described, and the same is, therefore, hereby confirmed to him, to hold the same in the capacity and for the uses set forth in his petition; and as to the remaining portion of the premises claimed in the petition, it is adjudged that the claim of the same is not valid, and the same is rejected.

The lands, of which confirmation is hereby made, are as follows, to wit:

(Here follows the description of the lands and buildings claimed at each of the missions whereof confirmation was made, including those at the mission of San Juan Capistrano, the premises in controversy.)

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, Dec'r 18th, 1855.

GEO. FISHER, *Sec'y.*

35 SCHEDULE C.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, greeting:

Whereas it appears from a duly-authenticated transcript, filed in the General Land Office of the United States, that, pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land-claims in the State of California," Joseph Sadoc Alemany, Roman Catholic bishop of the diocese of Monterey, in the State of California, as claimant, filed his petition on the 19th day of February, 1853, with the commissioners, to ascertain and settle the private land-claims in the State of California, sitting as a board in the city of San Francisco, in which petition he claimed the confirmation to him and his successors of the title to certain church property in California, "to be held by him and them in trust for the religious purposes and uses to which the same have been respectively appropriated," said

36 property consisting of church edifices, houses for the use of the clergy and those employed in the service of the church, church-yards, burial-grounds, gardens, orchards, and vineyards, with the necessary buildings thereon and appurtenances, the same having been recognized as the property of said church by the laws of Mexico in force at the time of the cession of California to the United States.

And whereas the board of land-commissioners aforesaid, on the 18th day of December, 1855, rendered a decree of confirmation in favor of the petitioner for certain lands described therein, to be held "in the capacity and for the uses set forth in his petition," the lands at the mission San Juan Capistrano being described in said decree as follows:

"The church and the buildings nearly adjoining thereto, built in a quadrangular form, which are known as the church and mission buildings of San Juan Capistrano, situated in Los Angeles County, together with the land on which the same are erected and the curtilage and appurtenances thereto belonging, and the enclosed cemetery which adjoins the same; also two enclosed gardens, known as the gardens of said mission, both being within five hundred yards of said buildings, and in

37 an easterly and southeasterly direction therefrom, and being the same which are delineated and designated as orchard and orchard and garden on map numbered 3, in the atlas above mentioned."

And, whereas, it further appears from a certified transcript filed in the General Land Office, that an appeal from said decree or decision of the commissioners having been taken on behalf of the United States to

the district court of the United States for the southern district of California, and it being shown to the court that it was not the intention of the United States to prosecute further said appeal, the said district court, on the 15th March, 1858, at the regular term "ordered that said appeal be dismissed, and said appellee have leave to proceed under the decree of the said land commissioners in his favor as a final decree."

And whereas, under the 13th section of the said act of 3d March, 1851, there have been presented to the Commissioner of the General Land Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 10th day of July, 1860, by the signature of the surveyor-general of the public lands in California, the requirements of the act of Congress, approved 14th June, 1860, in regard to the publication of surveys having been complied with in
38 this case, which plat and certificate are in the words and figures following, to wit:

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
San Francisco, California.

Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-three, and for other purposes," and in consequence of a certificate of the United States district court for the southern district of California, of which a copy is annexed, having been filed in this office, whereby it appears that the Attorney General of the United States having given notice that it was not the intention of the United States to prosecute the appeal from the decision of the United States Board of Land Commissioners appointed under the said act of March 3d, 1851, by which it recognized and confirmed the title and claim of Joseph Z. Alemany, bishop, etc., to the tracts of land designated
39 as the "Mission San Juan Capistrano," the said appeal has been vacated, and thereby the said decision in favor of the said Joseph S. Alemany, Bishop, etc., has become final.

The said tracts have been surveyed in conformity with the grant thereof and the said decision, and I do hereby certify the annexed map to be a true and accurate plat of the said tracts of land as appears by the field-notes of the survey thereof, made by Henry Hancock, deputy surveyor, in the month of February, 1860, under the directions of this office, which, having been examined and approved, are now on file therein.

And I do further certify that, under and by virtue of the said confirmation and survey, the said Joseph S. Alemany Bishop, etc., is entitled to a patent from the United States upon the presentation hereof to the General Land Office for the said tracts of land, the same being bounded and described as follows, to wit:

The tract of land designated as tract No. 1 of the Mission San Juan Capistrano, "beginning at a pillar ten links square at the base, at the re-entering angle joining the west wing of the main body of the church building, at the southeast corner of the same; thence according
40 to the true meridian, the variation of the magnetic needle being thirteen degrees thirty minutes east, south four degrees thirty minutes west one chain and seventy-five links to a rock eighteen inches long, fifteen inches wide, and five inches thick, station at the southwest

corner of the fallen wall of the central portion of the church buildings; thence south eighty-five degrees thirty minutes east fifty-six links to a rock eighteen inches long, fifteen inches wide, and five inches thick, station at the southeast corner of the fallen wall of the central portion of the church buildings; thence north four degrees thirty minutes east one chain and twenty-five links to a pillar in the re-entering angle of the central portion of the church, at its eastern wing station; thence south eighty-five degrees thirty minutes east ten links to the southeast corner of the pillar station; thence north four degrees thirty minutes east ten links to station at the east wing of the church; thence south eighty-five degrees thirty minutes east thirty-two links to station at the southeast corner of the east wing of the church; thence north four degrees thirty minutes east fifty-five links to station at the northeast corner of church; thence north eighty-five degrees thirty minutes west
41 thirty-two links, to station at the main body of the church; thence north five degrees fifteen minutes east twenty links to station; thence north nineteen degrees fifteen minutes west twenty-nine links to station at the northeast corner of the rear and main body of the church; thence along the cemetery wall north three degrees thirty minutes east three chains and twenty-two links to the northeast corner of same station; thence north forty-nine degrees fifteen minutes west one chain and twenty-seven links to the northeast corner of a row of buildings extending to the west, which forms the northern side of a row of buildings forty-five links wide, surrounding a court-yard on the west of the cemetery and church station; thence leaving the northwest corner of the cemetery and along the ruins of a row of old buildings on the west, north twenty-three degrees thirty minutes west three chains and seventeen links to station at the northeast corner of ruins; thence south eighty six degrees thirty minutes west along old ruins to the south of line four chains and thirty-four links to a point from which an interior garden wall extends south two degrees thirty minutes west nine
42 chains and sixty links to station at the northwest corner of the garden; thence south five degrees east four chains and thirty-seven links to an angle in the western adobe wall of garden station; thence south forty-five minutes west one chain and seventy-eight links to station at an angle of garden wall; thence south eight degrees west two chains and forty-one links to station at an angle of garden wall; thence south seventy-one degrees thirty minutes east one chain and twenty links to station at an angle of garden wall; thence south fourteen degrees thirty minutes east forty-seven links to end of garden wall two chains and fifty-eight links to a post station; thence across a garden north eighty-four degrees east two chains and sixty-seven links to the rear of old buildings bearing north one degree west five chains and sixty-seven links to a post and charred stake in mound of rocks, station at the east front of a range of buildings; thence north two degrees west one chain and thirty-four links to a recess in an old building—at two chains and thirty-four links leaves same—and along the eastern front of Bondini's house four chains and thirty four links to a row of buildings forming the south side of the court-yard station; thence south eighty-five degrees thirty minutes east one chain and twenty-nine links
43 to the court-yard thirty-one links wide, two chains and fifty links to station at a corridor in front of the dwelling; thence south, five degrees thirty minutes west seventy-four links to station at the southwest corner of corridor; thence south eighty-four degrees thirty minutes east one chain and seventeen links to station at an angle in the west wing of the church; thence south four degrees thirty minutes west

ten links to station; and thence south eighty-five degrees thirty minutes east ten links to the point of beginning, containing ten acres and sixty-two hundredths of an acre and being designated upon the plats of the public surveys as lot numbered thirty-seven in township eight south, of range eight west of the San Bernardino meridian.

The tract of land designated as "tract No. 2" bounded and described as follows, to wit:

Beginning at a sandstone rock, eighteen inches long, fifteen inches wide, and five inches thick, from which the end of course "No. 11 of tract number one" bears south eleven degrees east, distant twelve chains and seventy-five links; thence north nine degrees thirty minutes east one chain and fifty-four links to a stake station and north-
44 east corner of this tract; thence north eighty degrees thirty minutes west one chain and thirty links to a stake station; thence south nine degrees thirty minutes west one chain and fifty-four links to a rock twenty-eight inches long, eighteen inches wide, and eight inches thick, station and southwest corner of tract number two; and thence south eighty degrees thirty minutes east one chain and thirty links to the point of beginning, containing twenty hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered thirty-eight, in township eight south, of range eight west of the San Bernardino meridian.

The tract of land designated as "tract number three" bounded and described as follows, to wit:

Beginning at the stake placed for station number two, of tract number two, thence north sixty-six degrees thirty minutes east two chains and forty-five links to a stake station and southeast corner of tract "number three"; thence north twenty-three degrees thirty minutes west two chains and fifty-six links to a stake station and northeast corner of tract "number three"; thence south sixty-six degrees thirty minutes west two chains and forty-five links to a stake station
45 and northwest corner of tract "number three"; and thence south twenty-three degrees thirty minutes east two chains and fifty-six links to the point of beginning, containing sixty-three hundredths of an acre and being designated upon the plats of the public surveys as lot numbered thirty-nine, in township eight south, of range eight west of the San Bernardino meridian.

The tract of land designated as "tract number four" bounded and described as follows, to wit:

Beginning at a stake at the southwest corner of the orchard of the Mission, from which the end of course "number seven" of tract "number one" bears north thirty-nine degrees thirty minutes west, distant four chains and twenty-two links; thence north four chains and fifty-two links to a stake at the northwest corner of the adobe wall of orchard station; thence along said adobe wall south eighty-five degrees thirty minutes east six chains to a stake at the northeast corner of orchard station, from which an olive tree, twenty-four inches in diameter, bears south fifty-five degrees thirty minutes west, distant forty-six links, and an olive tree ten inches in diameter bears south twelve degrees thirty minutes east, distant fifty links;
46 thence south eight degrees thirty minutes east five chains and two links to a stake station and southeast corner of the orchard, from which an olive tree fourteen inches in diameter bears north eighteen degrees thirty minutes west, distant one chain and three links, and an olive tree fourteen inches in diameter bears north sixty degrees thirty minutes west, distant eighty links; and thence north eighty-one

degrees thirty minutes west six chains and eighty links to the point of beginning. Containing two acres and ninety-nine hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered forty, in township eight south, of range eight west of the San Bernardino meridian.

The tract designated as "tract number five" bounded and described as follows, to wit: Beginning at the northwest corner of said tract, being the tract containing an orchard and vineyard from which the southeast corner of tract "number four" bears north fifty-nine degrees west, distant four chains and seventy-three links; thence along adobe wall of same south fifty-eight degrees thirty minutes east nine chains and thirteen links to an angle in adobe wall station; thence
47 south forty-two degrees thirty minutes east four chains and fifty-six links to an angle in adobe wall station, and northeast corner of the tract above mentioned; thence south forty degrees thirty minutes west nineteen chains and six links to a post and charred stake at intersection with the west boundary of section seven, township eight south, of range seven west, four chains and sixty-seven links south of corner to sections one, six, seven, and twelve, twenty-four chains and forty-three links to station at the southeast corner of the wall of the vineyard; thence north thirty-seven degrees forty-five minutes west eight chains and twenty-five links to an avenue of olive trees, eight feet wide, course north thirty-seven degrees thirty minutes east twelve chains and eighty-one links to the southwest corner of the adobe wall of the orchard station; and thence north thirty-seven degrees thirty minutes east twenty chains and seventy links to the point of beginning, containing twenty-nine acres and ninety-six hundredths of an acre and being designated upon the plats of the public surveys as lot numbered thirty-eight, in township eight south, of range seven west, and lot numbered forty-one, in township eight south, of range eight west of the San Bernardino meridian.

48 In witness whereof I have hereunto signed my name and caused the seal of the said office to be affixed at the city of San Francisco this tenth day of July, eighteen hundred and sixty.

[SEAL.] J. W. MANDEVILLE,
U. S. Surveyor-General, California.

50 And whereas there has been deposited in the General Land Office of the United States a certificate dated June 27th, 1863, from the clerk of the United States district court for the southern district of California, showing that in the cause entitled "J. S. Alemany et al., appellees, ads. The United States, appellants," due notice by publication, in manner and form as required by law, has been made by the surveyor-general of the United States for California in the matter of the approved survey of the mission "San Juan Capistrano," confirmed to the claimant and appellee in the above entitled cause of J. S. Alemany vs. the United States, and "that the full period of six months from and after the completion of said publication has elapsed, and no objection thereto having been made or filed, the said approved survey has become final, and the claimant and appellee entitled to a patent" for the said mission.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, have given and granted, and by these presents do give and grant, unto the said Joseph S. Alemany, bishop of
51 Monterey, and to his successors, in trust for the religious pur-

poses and uses to which the same have been respectively appropriated, "the tracts of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the confirmation of this said claim and this patent "shall not affect the interests of third persons."

To have and to hold the said tracts of land with the appurtenances, and with the stipulation aforesaid, unto the said Joseph S. Alemany, bishop of Monterey, and to his successors, in trust for the uses and purposes aforesaid.

In testimony whereof I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this eighteenth day of March, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States the eighty-ninth.

By the President.

ABRAHAM LINCOLN.

52 [SEAL.] J. N. GRANGER.

Recorder of the General Land Office.

Recorded vol. 4, pages 154 to 163 inclusive.

Correct:

(Signed) J. B. FELTON & EDMUND L. GOOLD,

Att'ys for Def'ts.

53 SCHEDULE D.

Pio Pico, senior member of the departmental assembly and provisional government of both Californias.

By virtue of having on the fourth day of this month in this capital at public auction and to the highest bidder effected a sale of the part of the principal building of the mission of San Juan Capistrano, which results to be a surplus after the separation of the church, ministerial town-house, school-house, and prison, as well as three orchards of fruit trees and vines, and the furniture belonging to said mission, except what belongs to the temple, the purchase's of all the foregoing proved to be Messrs. Juan Paster and Santiago Mackenly as having been the last and highest bidders in the offer they made of seven hundred and ten dollars.

In consequence whereof and in exercise of the powers vested in me by the excellent departmental assembly in its resolution relative hereto on the 4th of July, this year, and in conformity with the regulations of 28th of October last past, I declare by the present letters patent that

54 the said Juan Foster and Santiago Mackenly *and* lawful owners of the part of the building, of the three orchards, and the furniture of the mission of San Juan Capistrano, which was sold to them by means of the consideration of seven hundred and ten dollars, which they are to pay in current money, or in hides and suet, valued in money, on the 10th of August, in the year 1846, to the departmental government or to the receivers of said mission, who thereto may be designated, being enabled from this day and by virtue of this document to take the judicial possession of the building, orchards, and furniture aforesaid, which the respective magistrate will give them.

Wherefore I order that these presents being held as a firm and valid

title-deed, it be entered in the book of registry of adjudication of lands and delivered to the interested parties for their security and other purposes.

Given in the city of Los Angeles on this common paper for want of stamped one, on the 6th day of December, in the year 1845.

PIO PICO.

JOSÉ M. A. CAVARRUBIAS, *Sec'y.*

(Endorsed:) Filed 2 November, 1875. L. S. B. Sawyer, clerk.

55 *Judgment.*

In the circuit court of the United States for the district of California.

Present, honorable S. J. Field, associate justice U. S. Supreme Court; honorable Lorenzo Sawyer, U. S. circuit judge.

FRANCIS MORA, PLAINTIFF, *vs.* JOHN FOSTER, MICHAEL KASWORSKY, Narcisse Guincochea, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, defendants.	No. 770.

This action having been tried by the court without a jury on the 15th day of September, 1875 (a trial by jury having been duly waived by stipulation in writing), and after due consideration of the evidence
56 adduced and of the arguments of counsel for the respective parties, the decision of the court having been rendered in favor of the plaintiff for the recovery of the possession of the premises described in the complaint with costs, and the findings of the court in writing having been filed: therefore it is considered that the plaintiff, Francis Mora, recover of the defendants, John Foster, Michael Kasworsky, Narcisse Guincochea, Salvador Mendez, Pedro Serdugo, and others, in the title of this action above named, the possession of the lands and premises described in the complaint in this action, situated in the county of Los Angeles, State of California, described as follows, to wit:

All that certain tract, piece, or parcel of land situate, lying, and being in said county of Los Angeles, known as the mission of "San Juan Capistrano," embraced and described in the final survey of the said premises, annexed to and being part of the patent of the United States, dated the eighteenth day of March, A. D. 1865, and issued to Joseph S. Alemany, bishop of Monterey, and his successors, as tract "No. one" of the mission "San Juan Capistrano," as follows:

Beginning at a pillar ten links square at the base, at the re-
57 entering angle joining the west wing of the main body of the church building at the southeast corner of the same; thence according to the true meridian, the variation of the magnetic needle being thirteen degrees thirty minutes east, south four degrees thirty minutes west one chain and seventy-five links, to a rock eighteen inches long, fifteen inches wide, and five inches thick, station, at the southwest corner of the fallen wall of the central portion of the church buildings; thence south eighty-five degrees thirty minutes east fifty-six links, to a rock eighteen inches long, fifteen inches wide, and five inches thick, station, at the southeast corner of the fallen wall of the

central portion of the church buildings; thence north four degrees thirty minutes east one chain and seventy-five links, to a pillar in the reentering angle of the central portion of the church at its eastern wing station; thence south eighty-five degrees thirty minutes east ten links, to the southeast corner of the pillar station; thence north four degrees thirty minutes east ten links, to station at the east wing of the church; thence south eighty-five degrees thirty minutes east thirty-two links to station at the southeast corner of the east wing of the church;
58 thence north four degrees thirty minutes east fifty-five links to station at the northeast corner of the church; thence north eighty-five degrees thirty minutes west thirty-two links to station at the main body of the church; thence north five degrees fifteen minutes east twenty links to station; thence north nineteen degrees fifteen minutes west twenty-nine links to station at the northeast corner of the rear and main body of the church; thence along the cemetery wall north three degrees thirty minutes east three chains and twenty-two links to the northeast corner of same station; thence north forty-nine degrees fifteen minutes west one chain and twenty-seven links to the northeast corner of a row of buildings extending to the west, which forms the northern side of a row of buildings forty-five links wide, surrounding a courtyard on the west of the cemetery and church station; thence, leaving the northwest corner of the cemetery, and along the ruins of a row of old buildings on the west, north twenty-three degrees thirty minutes west three chains and seventeen links to station at the northeast corner of ruins; thence south eighty-six degrees thirty min-
59 utes west along old ruins to the south of line four chains thirty-four links to a point from which an interior garden wall extends south two degrees thirty minutes west nine chains and sixty links to station at the northwest corner of the garden; thence south five degrees east four chains and thirty-seven links to an angle in the western adobe wall of garden station; thence south forty-five minutes west one chain and seventy-eight links to station at an angle of garden wall; thence south eight degrees west two chains and forty-one links to station at an angle of garden wall; thence south seventy-one degrees thirty minutes east one chain and twenty links to station at an angle of garden wall; thence south fourteen degrees thirty minutes east forty-seven links to end of garden wall, two chains and fifty-eight links to a post station; thence across the garden, north eighty-four degrees east two chains and sixty-seven links to the rear of old buildings, bearing north one degree west five chains and sixty-seven links to a post and charred stake in mound of rocks, station, at the east front of a range of buildings; thence north two degrees west one chain and thirty-four
60 links to a recess in an old building, at two chains and thirty-four links leaves same, and along the eastern front of Bandini's house four chains and thirty two links, to a row of buildings forming the south side of the courtyard station; thence south eighty-five degrees thirty minutes east one chain and twenty-nine links to the courtyard, thirty-one links wide, two chains and fifty links to station at a corridor in front of dwelling; thence south five degrees thirty minutes west seventy-four links to station at the southwest corner of corridor; thence south eighty-four degrees thirty minutes east one chain and seventeen links to station at an angle in the west wing of the church; thence south four degrees thirty minutes west ten links to station; and thence south eighty-five degrees thirty minutes east ten links to the point of beginning, containing ten acres and sixty-two hundredths of an acre, and being designated upon the plats of the public surveys as lots

numbered thirty seven, in township eight south, of range eight west of the San Bernardino meridian.

Also the tract of land situated in said county of Los Angeles, in said patent designated as "tract No. two," bounded and described as follows, to wit:

61 Beginning at a sandstone rock eighteen inches long, fifteen inches wide, and five inches thick, from which the end of course "No. 11," of tract "number one," bears south eleven degrees east distant twelve chains and seventy-five links; thence north nine degrees thirty minutes east one chain and fifty-four links to a stake station and northeast corner of this tract; thence north eighty degrees thirty minutes west one chain and thirty links to a stake station; thence south nine degrees thirty minutes west one chain and fifty-four links to a rock twenty-eight inches long, eighteen inches wide, and eight inches thick, station and southwest corner of tract number two, and thence south eighty degrees thirty minutes east one chain and thirty links to the point of beginning, containing twenty-hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered thirty-eight, in township eight south, of range eight west, of the San Bernardino meridian.

Also the tract of land situated in said county of Los Angeles, in said patent designated as tract "number three," bounded and described as follows, to wit:

62 Beginning at the stake placed for station number two, of tract number two, thence north sixty-six degrees thirty minutes east two chains and forty-five links to a stake station and southeast corner of tract "number three"; thence north twenty-three degrees thirty minutes west two chains and fifty-six links to a stake station and northeast corner of tract "number three"; thence south sixty-six degrees thirty minutes west two chains and forty-five links to a stake station and northwest corner of tract "number three," and thence south twenty-three degrees thirty minutes east two chains and fifty-six links to the point of beginning, containing sixty-three hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered thirty-nine, in township eight south, of range eight west, of the San Bernardino meridian.

Also the tract of land situated in said county of Los Angeles, in said patent designated as "tract number four," bounded and described as follows, to wit:

Beginning at a stake at the southwest corner of the orchard of the mission, from which the end of course number seven of tract "number one" bears north thirty-nine degrees thirty minutes west distant four chains and twenty-two links; thence north four chains and fifty-

63 two links, to a stake at the northwest corner of the adobe wall of orchard station; thence along said adobe wall south eighty-five degrees thirty minutes east six chains to a stake at the northeast corner of orchard station, from which an olive tree twenty-four inches in diameter bears south fifty-five degrees thirty minutes west distant forty-six links, and an olive tree ten inches in diameter bears south twelve degrees thirty minutes east distant fifty links; thence south eight degrees thirty minutes east five chains and two links to a stake station and southeast corner of the orchard, from which an olive tree fourteen inches in diameter bears north eighteen degrees thirty minutes west distant one chain and three links, and an olive tree fourteen inches in diameter bears north sixty degrees thirty minutes west distant eighty links, and thence north eighty-one degrees thirty minutes west six

chains and eighty links to the point of beginning, containing two acres and ninety-nine hundredths of an acre, and being designated upon the plats of the public surveys as lot numbered forty in township eight south, of range eight west, of the San Bernardino meridian.

Also the tract of land of situated in said county of Los Angeles,
64 in said patent designated as tract number "five," bounded and described as follows, to wit:

Beginning at the northwest corner of said tract, being the tract containing an orchard and vineyard, from which the southeast corner of tract "number four" bears north fifty-nine degrees west, distant four chains and seventy-three links; thence along adobe wall of same south fifty eight degrees thirty minutes east nine chains and thirteen links to an angle in adobe wall station; thence south forty-two degrees thirty minutes east four chains and fifty-six links to an angle in adobe wall station and northeast corner of tract above mentioned; thence south forty degrees thirty minutes west nineteen chains and six links to a post and charred stake at intersection with the west boundary of section seven, township eight south, of range seven west, four chains and sixty-seven links south of corner to sections one, six, seven, and twelve, twenty-four chains and forty-three links to station at the southeast corner of the wall of the vineyard; thence north thirty-seven degrees forty-five minutes west eight chains and twenty-five links to an avenue of olive trees eight feet wide, course north thirty-seven
65 degrees thirty minutes east twelve chains and eighty-one links to the southwest corner of the adobe wall of the orchard station, and thence north thirty-seven degrees thirty minutes east, twenty chains and seventy links to the point of beginning, containing twenty-nine acres and ninety-six hundredths of an acre, and being designated upon the plats of the public survey as lot numbered thirty-eight in township eight south, of range seven west, and lot numbered forty-one, in township eight south, of range eight west, of the San Bernardino meridian.

And further, that the plaintiff recover of the defendants his costs herein taxed at the sum of sixty dollars gold coin, and one dollar damages.

Judgment entered the 2d day of November, A. D. 1875.

L. S. B. SAWYER, *Clerk*.

A true copy of an original entered in the therein entitled cause in judgment register C. L., No. 2, pp. 118–122.

Attest, &c.

[SEAL.] L. S. B. SAWYER, *Clerk*.

66 (Endorsed:) Filed 2 November, 1875. L. S. B. Sawyer, clerk.

67 *Certificate to Judg't roll.*

In the circuit court of the United States for the district of California, ninth judicial circuit.

FRANCIS MORA
vs.
JOHN FOSTER ET AL.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, ninth judicial circuit, do hereby certify

that the foregoing and hereunto annexed papers constitute the judgment roll in the cause therein entitled.

Witness my hand and the seal of said circuit court this 2d day of November, A. D. 1875.

[SEAL.]

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed 2d November, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

68 *Stipulation as to title of pl'ff, etc.*

To the circuit court of the United States in and for the district of California, ninth circuit.

FRANCIS MORA, PL'FF,
vs.
JOHN FOSTER, MICHAEL KOSWORSKY, NARCISSE GUINCOCHEA, SALVADOR MENDEZ, PEDRO SERDUGO, JOHN WHITE, RICHARD BLACK, JAMES GREEN, WILLIAM BLUE, PETER YELLOW, and ABRAHAM VIOLET, def'ts.

Action to recover possession of lands at mission of San Juan Capistrano.

For the purposes of this action the defendants stipulate to admit on the trial—

1st. That the plaintiff, prior to and at the time of the commencement of this action, had, and still has, all the title to the premises described in the complaint, which vested in the grantee by or under the letters patent of the United States, dated March 18th, 1865, in favor of Joseph S. Alemany, Roman Catholic bishop of Monterey.

2nd. That the defendants were, at the date of the commencement of this action, and prior thereto, in actual possession of the
69 said premises.

Dated June 26th, 1874.

JOHN B. FELTON,
Defendants' Attorney.

3d. That immediately prior to the commencement of this action, the plaintiff demanded of the defendants, and of each of them, possession of the said premises, which was then and there refused.

Datep June 26th, 1874.

JOHN B. FELTON,
Defendants' Attorney.

(Endorsed:) Filed January 14th, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

70 *Opinion.*

In the circuit court of the United States of the ninth judicial circuit in and for the district of California.

F. MORA
v.
JOHN FOSTER ET AL.

The questions involved in this case have been substantially deter-

mined by the Supreme Court in the case of the United States v. Workman and Beard v. Federy, reported in the 1st and 3d of Wallace respectively, as will be seen by their examination. The present action is ejectment for the possession of certain church lands of the mission of San Juan Capistrano, in the county of Los Angeles, consisting of the church, church-yard, cemetery, garden, orchard, and vineyard, with the necessary buildings and appurtenances, the whole comprised within an area of forty-four acres and four-tenths of an acre. The plaintiff traces his title through Joseph S. Alemany, formerly Catholic bishop of Monterey, to whom a patent of the premises was issued by the United States on the 18th of March, 1865.

The record of the proceedings before the board of land commis-
71 sioners, which resulted in a decree confirming the claim upon which the patent was issued, was introduced in evidence; and in the petition of the bishop it was averred, in substance, that at the time of the conquest and cession of California to the United States, the canon law of the Roman Catholic Church was recognized and in force as the law of Mexico, as it had been in Spain when Mexico was a dependency thereof, in all things relating to the acquisition, transmission, and disposal of property, real or personal, belonging to the church or devoted to religious uses; that by the laws of Spain and Mexico, thus in force in California, the title, control, and administration of all ecclesiastical or church property were vested in the hands of the bishop and clergy of the diocese, who for such purposes were regarded as a body corporate; that at the date of the conquest and cession of California, the Catholic church had been in the actual and undisturbed possession of the premises in controversy since the year 1796; and that for the purpose of enabling the petitioner to hold the church property and administer the temporalities of the church and manage its estate and property,
72 he had been incorporated as a sole corporation by legislation of the State of California, under the name and title of Bishop of Monterey.

The claim thus asserted by the Catholic Church, through its bishop, to the lands in controversy is "of a right or title derived from the Spanish or Mexican Government," and is thus by the very terms of the act of Congress one the validity of which the board of land commissioners was authorized to consider and determine. Having considered it and having adjudged it to be valid, its validity not having been in any direct proceeding subsequently impeached, cannot now be questioned in the present action.

The defendants assert title under a grant of land made by Governor Pio Pico, in 1845, upon a sale directed by order of the departmental assembly, which grant was confirmed under the act of Congress of March 3rd, 1851. It is admitted for the purposes of this action that the confirmation has been followed by a survey approved by the surveyor-general of the United States; but this grant and confirmation cannot aid the possession of the defendants as against the patent under which the plaintiff claims. The departmental assembly possessed no
73 power to authorize a sale of any lands other than those of the department. Its powers were very carefully considered by the Supreme Court in the case of the United States v. Workman, and it was there held that that body could not confer upon the governor any power over the domain of the nation, and that its own power in the alienation of public property of that character was limited by the colonization laws of Mexico, to the approval or disapproval of grants made by the governor under those laws.

The counsel of the defendants, feeling the force of the adjudication in that case, contends that the title to the church lands was never vested in the bishop, or in the Catholic Church, but remained in the Mexican nation at the time of the conquest and cession of the country; and that the patent of the bishop is not therefore evidence of any title anterior to its date, and can only be treated as a conveyance of the interest which the United States then possessed; and that the defendants' confirmation and approved survey, taking effect by relation as of the date of their petition to the land commission, carries an earlier title.

The obvious answer to this position is that the adjudication of
74 the Supreme Court that the departmental assembly had no authority to authorize the governor to sell any portion of the public domain nullifies the effect of confirmation. That confirmation does not of itself translate the title of the United States. As declaring the validity of an existing title, it might operate to protect the estate of the confirmee. But the validity of that title having been assailed by the Supreme Court and overthrown, the confirmation can afford no aid to the defendants in their contest with the title of the plaintiff.

The patent is also something more than a mere conveyance of the government; it is evidence, having the force and operation of a record that the title claimed was valid, or at least entitled to recognition and confirmation at the time the sovereignty of Mexico over the country was superseded by the sovereign authority of the United States. It is evidence to that extent which is not open to dispute in an action of ejectment, except where the assailant comes into court possessed of a similar record, or one of equal dignity. The defendants stand in no such position; they have no such record; their confirmation and
75 survey being of a claim belonging to a class adjudged invalid by the highest tribunal of the nation furnishes no vantage ground to them in an attack upon an established and patented title beyond that held by mere trespassers.

The plaintiff is therefore entitled to the premises. It is admitted that the defendants were in their possession at the commencement of the action, but there is no evidence of their possession at any previous period. There is, therefore, no foundation laid for the recovery of any other than nominal damages, and none will therefore be awarded.

The plaintiff must have judgment for the possession of the premises, with one dollar damages; and it is so ordered.

San Francisco, September 22d, 1875.

(Signed) FIELD, *J.*

(Endorsed:) Read in open court Sept. 22d, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

76 *Stipulation that court may take judicial notice of the history of the missions, &c.*

United States circuit court for the district of California.

FRANCIS MORA
vs.
JOHN FOSTER AND OTHERS.

This cause having been tried on the theory adopted by counsel for both sides and approved by the court that the history of the missions of California and the proceedings of the supreme and departmental

governments of Mexico and California (legislative and executive) with respect to the said missions and the powers of the governors of the provinces of Mexico are matters of public history to be taken notice of by the court judicially, it is hereby stipulated (for abundant caution) that the same understanding shall be in force in the proceedings in error, and that any Mexican public document desired to be used by either party in the Supreme Court may be printed and furnished as addenda to the record.

On the part of the plaintiff in error reference is particularly made to the proceedings of the departmental assembly; and on the
77 part of the defendant in error to the petitions of Francisco Garcia Diego, bishop, &c., to the Government of Mexico, and the response thereto. Of these and of any others desired by either party copies are to be furnished reciprocally prior to the commencement of the next term of the Supreme Court.

Dated Oct. 21, 1875.

DOYLE & BARBER,
Atty's for Pl'ff.
JOHN B. FELTON,
EDMUND L. GOOLD,
For Def'ts.

(Endorsed:) Filed 2 November, 1875. L. S. B. Sawyer, clerk.

78 *Bond on appeal.*

In the Supreme Court of the United States of America.

JOHN FOSTER ET AL., PLAINTIFFS IN ERROR,
vs.
FRANCIS MORA, DEFENDANT IN ERROR.

Know all men by these presents that we, Henry C. Ruhl, of the city and county of San Francisco, California, and Adolph Pavillier, of the city and county of San Francisco, California, are held and firmly bound unto Francis Mora in the sum of one thousand ($1,000) dollars, to be paid to the said Francis Mora, his executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this 10th day of November, A. D. 1875.

Whereas John Foster, Michael Kasworsky, Narcisse Guincochea, Salvador Mendèz, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, hath
79 prosecuted a writ of error to the Supreme Court of the United States of America, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of California:

Now, therefore, the condition of this obligation is such, that if the above-named John Foster, Michael Kasworsky, Narcisse Guincochea, Salvador Mendez, Pedro Serdugo, John White, Richard Black, James Green, William Blue, Peter Yellow, and Abraham Violet, shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

HENRY C. RUHL. [SEAL.]
ADOLPH PAVILLIER. [SEAL.]

Signed, sealed, and delivered in presence of—
Jos. F. O'BEIRNE.

UNITED STATES OF AMERICA,
District of California, ss:

Henry C. Ruhl and Adolph Pavillier, being duly sworn, each for himself and not for the other, deposes and says that he is worth the
80 sum of one thousand ($1,000) dollars exclusive of property exempt from execution, and over and above his just debts and liabilities.

HENRY C. RUHL.
ADOLPH PAVILLIER.

Subscribed and sworn to before me this 10th day of November, A. D. 1875.

JOS. F. O'BEIRNE,
Commissioner of U. S. Circuit Court, Dist. of Cal.

I approve the form of the within bond and the sufficiency of the sureties thereon.

OGDEN HOFFMAN,
U. S. District Judge.

(Endorsed:) Filed 11th November, 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

81 UNITED STATES OF AMERICA:
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing and hereunto-annexed eighty pages, numbered from 1 to 80 both inclusive, contain a full, true, and correct copy of the record and of all proceedings in the therein-entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 16th day of November, A. D. 1875.

[SEAL.]

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

(Indorsement on cover:) No. 140. John Foster, Michael Kasworsky, Narcisso Guincochia, Salvador Mendez, Pedro Serdugo, John White, Richard Black, et al., plaintiffs in error, vs. Francis Mora. California, C. C. U. S. Filed 28th August, 1876.

No. 140.

Supreme Court of the United States.

JOHN FOSTER, ET AL.,
Plaintiffs in Error.

vs.

FRANCIS MORA,
Defendant in Error.

Error to the Circuit Court of the United States for the District of California.

Brief for Plaintiffs in Error.

EDMOND L. GOOLD,
Counsel.

IN THE SUPREME COURT

OF THE

UNITED STATES.

JOHN FOSTER, ET AL,
Plaintiffs in Error.
vs.
FRANCIS MORA,
Defendant in Error.

No. 140.

Error to the Circuit Court of the United States for the District of California.

BRIEF FOR THE PLAINTIFF IN ERROR.

The defendant in error instituted this suit for possession of certain lands of the Ex-Mission of "San Juan Capistrano," composing an area of about forty-six acres, deraigning title from the Reverend J. S. Alemany, Roman Catholic Bishop of Monterey, who it was averred, owned the premises by virtue of the canon law of the Roman

Catholic Church, in force as a part of the body of the law of Mexico at the date of the session.

The plaintiffs in error, were at the date of the institution of the suit, in possession of the premises by virtue of a sale made by Governor Pio Pico on December 6, A. D., 1845. All the allegations of the complaint were denied.

The plaintiffs in error being in possession, and having plead the general issue, is entitled to judgment unless it be shown that the claim upon which the patent of the defendant in error is based is the superior, for the plaintiff below must recover upon the strength of his own title, and not upon the weakness of ours.

Our claim is, by relation, the superior because our petition for confimation was filed October 3rd, 1852, and the adversary petition was not filed until February 19th, 1853. We ante-date our adversary then, *nearly four months.*

The confirmation of the grant under which the plaintiffs in error claim, has all the force and effect of a patent.

> *See Act of June 14, 1860, Sec. 5.*
> *12 Statutes at Large, p. 34.*

The fact that a patent actually issued to the predecessor of the defendants in error, is of no moment on this occasion.

The issuing of the parchment is a mere ministerial act. It ascertains no rights. It *recognizes* them, and, is the convenient means of proof. For the U. S. never owned the land. It was held in trust for the true owner whereever he might be.

The confirmation, the dismissal of the appeal, followed by an approved survey, amount to a complete alienation of, or a quit claim to the land, by the government to us. And we therefore, have all the title the government ever had. The segregation was complete.

The Rev. J. S. Alemany never had a grant of the demanded premises, nor does he connect himself with any grantee thereof, artificial or natural.

No Spanish King or Viceroy, or Mexican President, constitutional or despotic; no Mexican Governor, legitimate or revolutionary; no Mexican Congress, or other body of men having lawful or usurped authority, ever made a grant of the property in dispute, to any Church Corporation or Hierarchy, or religious body, or any ecclesiastic, or any society of any description, formed for the purpose of divine worship.

If any such grant ever existed, the persevering and intelligent industry of the opposite counsel would surely have brought it to light. The whole spirit and genius of the Spanish Jurisprudence forbade a mutation of title to the soil, save by writing, composed and authenticated in the most precise and formal manner. And the copious citations of a historical character which grace the opposite brief, failing to point to one instance of the creation of a grant of this property; serve but to emphasize this statement.

The adversary argument seems to be that the church authorities were vested with title because the ground was used for church purposes.

The Church Fathers of California saw the matter in a very different light. When they wanted a title to the soil for the promotion of the ends of their sacred calling, they asked the Governor for a grant, and they got it. The history of the church, as found in the archives of the Surveyor General's office, attest this abundantly We imitate our adversary in referring to historical facts, but shall content ourselves with mentioning but six of them.

1. On February 27th, 1844, The Right Rev. Bishop Francisco Garcia Diego petitioned Micheltorena, (quoting the request of "Our Sovereign "Pontiff Gregory 16th, touching the erection of a "Diocese") for four valleys for the purpose of the erection of a seminary in Santa Inez. And a grant therefore was made in his favor, on March 16th, 1844.

2. On September 12th, 1844, Fr. Jose Joaquin Ximeno petitioned for an extension of two leagues more, and the land was granted by the Governor on September 26th, 1844.

3. On July 16th, 1844, Governor Micheltorena grants, for the support of Divine Worship at the Mission of San Miguel, a vineyard called "La Mayor," and on July 28th, 1844, Fr. Francisco, Bishop of the California, accepts the grant.

4. On April 18th, 1844, Friar Jose Ximeno, commissioned, as he declares, by the most Illustrious Bishop of California, petitions the Alcalde of Santa Barbara for juridicial possession of certain lands already granted, and juridicial possession was accordingly given.

5. On January 29th, 1846, Fr. Tomas Maucillo of the Sacred Order of the Apostolic Missionaries, etc, petitions Governor Pio Pico for a grant of land of the Mission of San Tomas; and February 3d, 1846, Pico grants him two square leagues of the Mission lands of San Tomas, the garden, the buildings, etc.

6. On July 16th, 1844, Governor Micheltorina granted for the use of the Church of San Luis Obispo one square league of land; and on July 28th, 1844, the grant was accepted by Fr. Francisco, Bishop of the Californias.

The foregoing citation of historical facts amounts to a demonstration that no person in Holy Orders in California, in her ancient days, ever dreamed of the existence of a title to the soil in any religious body of men, by reason, merely, of its religious character, and of the sacred purposes to which such soil and its improvements were to be dedicated.

Our government in fact, has never raised the question. The confirmation of the lands of "San Juan Capistrano" was never examined by this Honorable Court. And it is well known to the profession that the confirmation was placed mainly

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Our government in fact, has never raised the question. The confirmation of the lands of "San Juan Capistrano" was never examined by this Honorable Court. And it is well known to the profession that the confirmation was placed mainly

on the ground of a supposed dedication by the Spanish and Mexican Governments. The opinion of the Land Commission as far as we know, has never been criticised, and, when it shall be, in some case which may involve its thoughtful examination, there will be required a strong effort to refrain from transgressing the limits of forensic decorum.

Every tyro knows that a dedication may be made *to* a government. It was reserved to the Land Commissioners to say a dedication had been made *by* one.

Our case then stands, thus: We are in possession, and have been since December, 1845. We went into possession in good faith. Pursuant to a purchase, we parted with our money, and we are to be considered as having a patent, as well as our adversary. Then, as our claim was first presented, our patent must be held the superior of the two.

If it be said we had no title, originally, the same must be said of our adversary.

Then, if neither had a title, the *possession* must prevail.

Certainly something is due to an ancient possession commenced in good faith, and involving the expenditures of monies which went into the Mexican *fisc*, and can never be recovered.

EDMOND L. GOOLD,
Counsel.

APPENDIX.

Translation of Mexican Grants to Church Authorities.

APPENDIX.

MOST EXCELLENT SIR:

I, Friar Tomas Mansilla, of the Sacred Order of the Apostolic Missionaries on the frontier of Lower California, before your Excellency, in due form of law, represent that this departmental Government, having determined on the colonization of the Missions of the frontier, and even that of Santo Tomas, the place of my residence, and having no other means of support in these almost desert places, nor having any means for the support of divine worship, so important for the propagation of the faith where there are many catechumens, I ask your Excellency to be pleased to grant me the said Mission for the support of divine worship, and that of the father minister, with all of its lands, or lands used for raising stock, gardens and buildings, issuing for this purpose the corresponding title of ownership in favor of said church, ordering that the respective Judge give the juridical possession; which is a favor that I beseech, making the necessary oath, etc., admitting this on common paper for want of sealed paper.

Angeles, January 29, 1846.

FR. TOMAS MANSILLA.

On the foregoing petition Governor Pico, on the 3d of February, 1846, issued the following grant:

"Pio Pico, Senior Member of the Departmental Assembly and Governor *ad interim* of the Californias.

"WHEREAS, the Father Minister of the Mission of Santo Tomas, Fr. Tomas Mansilla, has made a representation of the necessity that he has to provide for his subsistence in the discharge of his duty as a minister of divine service, and in view of what he has set forth, I have thought proper, in exercise of the authority conferred on me in the name of the Mexican nation, to concede to the Church, and for the support of the minister, two square leagues of the vacant lands of the said Mission of Santo Tomas, the gardens and the buildings under the extent as shown by the diseño, which shall be correctly formed, and under the following conditions:

"1st. They may enclose the two square leagues referred to, and also the garden (or orchard), without prejudice to the crossings, roads and cemeteries.

"2d. The Indians shall not be prevented from cultivating the lands on which they live at present, within the limits of the lands of the Mission.

"In consequence whereof I order that this title, being held as firm and valid, be registered in the corresponding book, and be delivered to the Father Minister for the necessary ends.

"Given in the city of Los Angeles, on common paper, for want of the corresponding sealed paper, on the 3d of February, 1846.

Signed: "PIO PICO,
JOSE MA. CIVORMBIAS."

I certify the foregoing to be a correct translation of a portion of the original expediente of the grant to Father Tomas Mansilla, of the lands of the Mission of Santo Tomas, which expediente is found among the Spanish archives of the office of the U. S. Surveyor-General.

San Francisco, Sept. 17, 1875.

R. C. HOPKINS.

TRANSLATION 1844.

Expediente advanced by the Rev. Fathers founders, soliciting a piece of land for the Seminary in Santa Ynez. (1844.)

MOST EXCELLENT GOVERNOR:

The Rt. Rev. Bishop of this Diocese, Francis Garcia Diego, desiring most anxiously the establishment of Seminary College, as required by the Sacred Council, and according to the express and reiterated request of our Sovereign, Pontiff Gregory XVI., who had the goodness to erect a diocese in this upper and lower California, and more than two years having passed without his being able to take a single step towards a work so important and so absolutely necessary, on account of the great want in which he has been, his L. has vouchsafed to appoint us, the undersigned priests, that looking after the proper means, we may realize its establishment. To obtain this, we have endeavored to rouse up the piety of many good fathers of families, and other pious persons, who have the best

dispositions to co-operate with their charities. Knowing the good and useful result that all must derive from so holy a work; but, as the greatest portion of such charities consists in cattle, and the seminary requires a tract of land to ensure its preservation: Therefore, we having been named by the Rt. Rev. Bishop of said Diocese, as founders, rectors and professors, earnestly ask Y. E., in the name of the seminary, and for the same, the four valleys (quadro cañadas) of Sotonocomia, Alisgüey, Calabazza and Aquichuma, belonging to the Mission of Santa Ynez, which contain some six leagues (seis sitios de ganado mayor), the plan of which we subjoin; and, although it is true that the said tract of land is occupied by the Mission with some of its cattle, yet, after consulting the will of the Neophytes, they gladly and freely consent to its being also used for the said seminary, having in it personal property, landed property, or any other that it may require, with the condition that their cattle may continue to pasture on it; hence, what we ask of Y. E., is the approbation of this consent, and the right *ad rem*, meantime it is declared unappropriated, in which case it will immediately have the right *in re*, and the absolute ownership.

The said undersigned hope, from the known goodness and piety of Y. E., and from the good wishes that you foster for the education, enlightenment and progress of the inhabitants of this country, that not only you will accede to our petition, but that you will also favor us with all necessary protection for the erection, conservation and

progress of the college, for which favors Y. E. shall receive the rewards of Heaven, and the eternal gratitude of all the Californians.

Mission of Santa Barbara,
Feb. 27th of the year, 1844.
FR. JOSEPH JOAQ'N. HIMENO,
FR. FRANC'O. DE JESUS SANCHEZ,
FR. JUAN MORENO.

SIR GOVERNOR:

The grand object of the preceding petition is worthy of the consideration of Y. E., and I see no reason why the land petitioned for may not be granted, under the conditions mentioned by the Rev. Fathers, and those of the law bearing.

+

I. M. I.

Very Rev. Fathers, P. P. A. A., Fr. Joseph Joaquin Ximeno, Fr. Franco. de Jesus Sanchez and Fr. Juan Moreno.

My Rev. Fathers and Sirs:

I have seen attentively the memorial that you are going to present to his E. the Governor for the erection of a seminary college that you intend to establish in the Mission of Santa Inez, with proper and indispensable lands, that you have deemed necessary for its erection and conservation, taking care that all should be done with the approval of the Supreme Government, as an indispensable measure for the happy result of such a great work as the one that you are going to

undertake, in which, as in the memorial, far from finding any inconvenience, on the contrary, I find nothing but reasons for praising you, and congratulating myself on the known zeal that animates you with the object that the spiritual ministry of both Californias may in future be procured from the very natives, by means of the ecclesiastical learning that will have to be imparted to them, and which, I suppose, is your principal object. You know there are no hopes of obtaining priests from the interior. It would not be honorable to the Mexican nation that priests should come from foreign countries, and this might even cause dishonor to the Government, evincing a necessity of having recourse to foreign nations for the support of Catholic worship in these Californias, which are entirely Catholic and addicted to their religion, which necessity may be obviated by the means which you, being inspired by Heaven, had in view, and which will render unnecessary such a recourse.

Wherefore, as far as it lies in me as Prelate of our Missions, and in the name of our College of San Fernando, I give to you the blessing that you may present your memorial to his Excellency the Governor, and I entreat myself the known piety of his Excellency, that he may favorably receive your petition, and aid your undertaking for the greater honor and glory of God, and for the greater spiritual and temporal good of this department. May God protect you for many years.

Santa Barbara, Feb. 28, 1844.

FR. NARCISSO DURAN,
Com'r Prefect of the Mission of San Fernando.

Very Rev. Fathers, P. P. A. A., Fr. José Joaquin Ximeno, Fr. Franco. de Jesus Sanchez and Fr. Juan Moreno.

We enclose the accompanying memorial that you be kind enough to examine it and to let us know whether there may be in it any thing discordant or unlawful, so that it may be presented to his Excellency the Governor.

Respectfully yours, etc.,

Santa Barbara, Feb. 28, 1844.

FR. JOSÉ JOAQUIN XIMENO,
FR. FRANCO DE JESUS SANCHEZ,
FR. JUAN MORENO.

R. F. Prefect, Fr. Narcisso Duran:

Most Excellent Sir—I send your E. a copy of the act that we gave to Rev. Fr. Prefect Fr. Narcisso Duran, asking his opinion on the subjoined memorial and his original answer. I have the honor to renew to your E. my greatest regard and attention.

Of. Y. E.

Santa Inez, March 5, 1844.

JOSÉ JOAQUIN XIMENO.

To His Excellency the Governor, Manuel Micheltorena:

To the judgment of Y. E. to take any measures for the protection of the establishment, preservation and progress of the college which is to be established, but your E. will dispose as may seem best.

Monterey, March 13, 1844.

MAN'L XIMENO.

MONTEREY, March 13, 1844.

Granted in the terms in which they ask, stating to the V. R. F. F. collectively signing that moreover this Government will give annually to their agent the sum of five hundred dollars ($500) in silver, from January, 1844, with condition of admitting in it, under their established rules, every inhabitant of the department who, being instructed in the primary education, may wish to pursue higher studies. Let it be delivered with proper notes to his Lordship, and let it be published by public banns for general notice in all places, and let information be given at the office of the Commissary.

MICHELT'A.

The citizen Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff of the same, Governor, Commanding General and Inspector of the Department of both Californias:

Inasmuch as the Rev. F. F. Fr. José Joaquin Ximeno, Fr. Franco. Jesus Sanchez and Fr. Juan Moreno, as founders appointed by his Lordship the Bishop of this Department for the establishment of a seminary in Santa Inez, have solicited in behalf of said seminary the four valleys (cañadas) called Sotonocoma, Alisguey, Cabazza and Aquichuma, belonging to said Mission in extension of six leagues *(seis sitios de ganado mayor)*, in virtue of the faculties vested in me, and in the name of the Mexican nation, I have concluded to grant

the tract of land mentioned for the proposed object, subject to the following conditions:

1st. It may be enclosed without prejudice to public roads and servitudes, it will be destined to the use or culture, most suitable to the seminary, without injuring the property of the mentioned Mission.

2d. The tract of land in question is of six leagues (seis sitios), and is shown by the plan accompanying the proper expediente. As soon as it will be declared unoccupied by the property, now belonging to Santa Ynez, the proper judge shall be asked that the juridical possession be given by virtue of this order, who shall mark the limits at the boundaries of which the proper landmarks shall be placed.

Therefore, I command, that this grant, being held good and valid, an account of it be entered in the proper book, and let this be delivered to the above mentioned R. R. F. F. for its due evidence.

Given at Monterey, the sixteenth of March of eighteen hundred and forty-four.

MICHELT'A.

Most Excellent Sir:

Fr. José Joaquin Himeno, Fr. Fran'co Sanchez and Fr. Juan Moreno, Rector, *vice* Rector and Professor of this Seminary College of our Lady of Guadaloupe, appear in its behalf, with due regard, before Y. E., and in due form expose and state—

That, inasmuch as the four valleys (cañadas) of Alishuay or Belen, of Sotonocomis, or O. L. of Remedies, Calahasa or Purification and Aquichuma, or St. John of God, contained in the plan that we sent to this Superior Government, and which were granted by Y. E. in behalf of the above mentioned college, are not sufficient, on account of the much waste land that is in them to sustain the number of horned cattle, sheep and other cattle, that may be required to form a sufficient fund for the expenses to be incurred in sustaining property, the officers, collegians and students that have to compose the seminary.

Therefore, we ask Y. E. may vouchsafe to increase, on the north and west, the land already granted, which we hope, from the goodness and generosity of Y. E., that it may be of two more leagues (dos sitios de ganado mayor), so that the whole may consist of eight leagues (ocho sitios).

We ask Y. E. to accede to this our petition, in which this college will receive favor, and will be perpetually grateful to you as its chief benefactor.

Mission of Santa Inez, Sept. 12, 1844.

Fr. Jose Joaquin Himeno,
Fr. Fran'co de Jesus Sanchez,
Fr. Juan Moreno.

Monterey, Sept. 26th, 1844.

Having seen the petition at the head of pre ceding communication, the informations that were taken, with everything else that was taken into

account, in conformity with the laws and regulations on the matter.

I declare favorably the Seminary College of our Lady of Guadaloupe, owner of the two more leagues (dos sitios mas), as an extension of the land of six leagues (seis sitios) already granted to it. Let the proper order be given ; let an account be taken in the proper book, and let this " Expediente" be directed to the E. Departamental Assembly for its approval. His Excellency the Governor thus ordered, decreed and signed, which I certify :

Man'l Micheltorena, Brigadier General of the Mexican Army, Governor, Commanding General of the Californias :

Inasmuch as the Rev. Fr. Rector, the V. Rector and the Professor of the Seminary College of Our Lady of Guadaloupe have solicited the extension of two leagues *(dos sitios de ganado mayor)* on the north and west to the land of six leagues *(seis sitios)* granted by previous title for the same seminary, and considering the praiseworthy object for which it is intended, and having made the proper inquiries according to what the laws and regulations prescribe on the matter, making use of the faculties conferred on me in the name of the Mexican nation, I grant the extension of the two leagues *(los dos sitios)* above mentioned, subject to the approval of the E. Departmental Assembly, and to the following conditions:

1st. It shall not be sold, alienated, or mortgaged, or bound by any security or any other obligation.

2d. It may be enclosed without injuring the public roads and servitudes; the college shall enjoy it freely and exclusively, destined to the use and culture which may be judged best.

3d. The proper Judge will be solicited to designate the boundaries, and to place in their limits the corresponding landmarks.

4th. If these conditions be not observed, the right to the land shall be lost, and others may apply for it.

Wherefore I command that the title being held good and valid, an account of it be entered in the proper book, and let this be given to the petitioners for their own purposes.

Given in Monterey the 26th of Sept., 1844.

MANUEL MICHELTORENA.

MANUEL JIMENO,
Secretary of Dispatches.

Account taken.

Endorsed: No. 609.

JOSEPH S. ALEMANY.

Lands of the Catholic Church.

Translation of Expediente of Ranch of San Tridro.

Filed in office March 28, 1855.

GEO. FISHER,
Secretary.

Citizen Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant-General of the Staff thereof, Governor-Commandant-General and Inspector of the Department of the Californias.

Whereas, it is indispensable that provision be made in some manner for the support of Divine worship at the Mission of San Miguel, and in attention to the representation of the respective Rector upon the subject, I have thought proper, in the exercise of the powers with which I am invested, in the name of the Mexican nation, to grant for the church of said Mission, the vineyard which was called "La Mayor," under the dimensions thereof, as they have been known, within its enclosure.

Therefore, the present answering him as a title, and being held as firm and valid, I command an entry to be made of it in the proper book, and that this be delivered to the rector to be filed in the respective archives as an evidence of the same.

Given at Monterey on the 16th of July, 1844.

(Signed) MAN'L MICHEL'A.
(Signed) MAN'L JIMENO, Sec'y.

Entry is made of this patent in the proper book, on ninth leaf.

(Signed) JIMENO.

PUEBLO OF SAN LUIS OBISPO,
July 28, 1844.

Having examined the foregoing document, the firmness, the validity and authenticity whereof we

are satisfied, in the name of the church we accept the donation made to us in this title of the vineyard therein described, and we therefore declare, that the said property, and the products thereof, shall be held and respected henceforth as so much ecclesiastical property which they enjoy as an immunity, and that no person shall occupy, sell, settle upon, donate, hypothecate the same, nor impose rent thereupon, nor transfer it in emphytenta, nor impose any imcumbrance whatever upon it, without our authority and permission, under the ecclesiastical penalties imposed by law. We ordain, therefore, that the said property be presented and improved, as much as for the better fulfillment of the charitable purposes thereof, and we commend to the present vicar of those churchs of San Luis Obispo and San Miguel; Don Miguel Gomez, the superintendence thereof, in order that the aforesaid property may be cultivated with every attention, and we authorize him to appropriate all the nett proceeds thereof to the defraying of the necessary expenditures for divine worship, and those of his own suitable support. Finally, we command that this original title be kept in our Episcopal Archives; whereof, and of this acceptation, declaration and decree, an authen ticated copy shall be made, and it shall be delivered to the aforesaid presbyter, Don Miguel Gomez, for his information, consequent purposes, and that he carefully preserve it in the archives, relative to the church of San Miguel.

His most Excellent Worship, thus decreed and signed, which I, the undersigned Secretary o

Council and Government, the day and date above written.

(Signed) F. FRANCISCO,
Bishop of the Californias.

By order of His Most Illustrious Grace,
FR. JE. MA. DE JE'S GONZ'S,
Sec'y.

I, George Fisher, Secretary of the U. S. Land Commission. to ascertain and settle private claims in the State of California, hereby certify the foregoing to be a true and correct translation of Exhibit No. 2, A. F., annexed to deposition of Mariano Bonillo, January 7, 1854, in case No. 609, Joseph S. Alemany vs. the United States, now on file in this office.

In testimony whereof I have hereunto signed my name, at office at the City of San Francisco, Cal., this 27th March, A. D. 1855.

GEO. FISHER.

(Endorsed). No. 609.

JOSEPH S. ALEMANY.

Lands of the Catholic Church.

Translation of Exhibit No. 2, A. T., annexed to deposition of Marcanno Bonilla, January 7, 1854.

Filed in office, March 27th, 1855.

GEO. FISHER.
Sec'y.

Recorded in Record of Evidence, vol. 19, page 532.

Fees $6.

SANTA YNEZ, April 18, 1845.

Delivered to the Rector of the College, Rev. P. F. José Joaquin Jimeno, by Nicolas A. Den.

No. 1.

Señor Alcalde 1st of Santa Barbara:

I, Friar José Joaquin Jimeno, Rector of the Episcopal Seminary College and Commissioner by the most illustrious Señor Bishop of Californias, as per his decree of the 4th of May, 1844, appear before your Honor and state: That having obtained the grant in property of the tract of land known by the name of "Cañada de los Pimos," including the whole of "Calaguasá" and also "Alishuei," "Aquichuma" and "Sotonocomu," embracing eight square leagues, according to two titles which I duly accompany, dated the 16th of March, 1844, and September 26th of the same year, issued by his Excellency the Governor of the Department, I request you to give me the legal judicial possession thereof, in conformity with the said titles, which documents I send you with this my petition, and have the kindness to give to this common paper all its validity for the want of that of the proper stamp. I swear the necessary, etc.

Santa Inez, April 12, 1844.

FR. JOSÉ J. JIMENO.

SANTA YNEZ, April 12, 1844.

In virtue of the foregoing petition, let me, the present Juez, proceed to the measurement, the designation of the boundaries, and the judicial

possession of the tract of land, "Cañada de los Pimos," which the party interested in this expediente asks for, in accordance with the documents which he accompanies, appointing therefor the 14th day of the present month, for which purpose the *colindantes* shall be summoned to appear. Thus I, the Juez of the *Partido* of Santa Barbara, ordered, decreed and signed it, acting *ad interim* with assisting witnesses for the want of a National and Public Notary, which I attest.

(Signed) NICOLAS A. DEN.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.
(Signed) JUAN P. AYALA.

On the same day, being present Don José de los Santos Avila as the agent of the Rev. Padre, Fr. José Joaquin Jimeno, to receive the possession of the aforesaid tract of land, the foregoing *auto* was notified to him, and, understanding it, he said that he heard it, and acknowledged himself summoned, and he signed it with me and my assisting witnesses, which I attest.

(Signed) NICOLAS A. DEN.
(Signed) JOSÉ AVILA.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.
(Signed) JUAN P. AYALA.

On the same day the summons ordered in the first decree were issued, and in testimony thereof I rubric it. (Rubric)

Being on the rancho of the "Cañada de los Pimos," on the 14th day of the month of April, one thousand eight hundred and forty-five, in obedience to the summons served upon the *colindantes* of the said rancho, Don Agustin Tansens appeared for the rancho named "Lomas de la Purificacion," and the neophyte, Antonio, for that of "Saca," Marcelino for that of "Alaliyuáia," and Blas for the "Sanja de Cota;" and having notified them that I was going to proceed to the measurement, designation of boundaries and possession of the tract of land (called) "Cañada de los Pimos" in favor of the Episcopal College, they declared themselves notified thereof, and in testimony whereof they signed it with me and my assisting witnesses, which I attest.

(Signed) NICOLAS A. DEN.
AGUSTIN TANSENS.

The aforesaid neophytes do not know how to write.

(Signed) ANTONINO, X.
(Signed) MARCELINO, X.
(Signed) BLAS, X.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.
(Signed) JUAN P. AYALA.

In continuation, I, the Juez of these *autos*, appointed Don Antonio Rodriguez and Don José Maria Valenzuela as measurers in the present possession, who, having accepted and made oath, will proceed to the discharge of their trust, and in

testimony hereof I enter it as a *diligencia*, which I sign with my assisting witnesses, which I attest.

(Signed) NICOLAS A. DEN.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.
(Signed) JUAN P. AYALA.

On the same date and on the aforesaid rancho the foregoing *auto* was notified to Don Antonio Rodriguez and Don José Ma. Valenzuela, whereupon they said that they accepted, and did accept, the said trust of measures, and swore by the Lord our God and a sign of the cross to perform the same faithfully and legally, to the best of their ability and understanding, without prejudice or fraud against any person, and they signed it with me and the assisting witnesses, which I attest.

(Signed) NICOLAS A. DEN.
(Signed) ANTONIO RODRIGUEZ.
(Signed) JOSÉ MA. VALENZUELA.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.
(Signed) JUAN P. AYALA.

In continuation and before me, the aforesaid Juez, the above mentioned measurers took a hemp cord and measured fifty varas, with a common Mexican vara, for the purpose of making the said measurement, and in testimony thereof I *rubric* it.

(Rubric)

On the same date and on the aforesaid rancho, it being about 8 o'clock in the morning, I, the Juez aforesaid, ordered the appointed measurers to place themselves upon the bank of the river in front of the "Cañada," called by the Indigenes "Annumequime," which, south of the river, forms the boundary of the Messrs. Carrillo and Tansen, and on the west to the lands of the Mission of Santa Inez, where there is a marked *alamo* that serves as a landmark, to proceed to the measurement of the land which is to be made to the Rev. Padre W. José Jimeno; and having placed themselves at the said place, the measurement was commenced, stretching the cord towards the east along the bank of the river, in the most faithful manner for the performance of a legal measurement, three hundred and thirty cordels of fifty varas, which terminated at the "Cañada de Aquichumu," where a tree was marked as a bound. The said measurement was then continued, stretching the cord from the foot of the "Sierra de San Rafael," course south, and there were measured three hundred and twenty cords of fifty varas. On the following day, in consequence of the brokenness of the said land, and having to curtail some land which belongs to sundry neophytes on the said tract of land, I, the said Juez, commenced to measure the width of said tract of land from the point from which (the measurement) was commenced the first day, and the said measurement to ascertain the width of both extremes having been continued, stretching the cord towards the north till reaching the boundary of the neophytes,

Antonino, three hundred and two cords were measured, of fifty varas, whereupon the said measurers declared the said rancho to contain three leagues one thousand and five hundred varas in length, and three leagues and one hundred varas in width, with the understanding that about three square leagues are to be curtailed therefrom, lying within the said measurements, belonging to sundry neophytes; and in testimony thereof I signed it as an *auto* with the assisting witnesses, which I attest. (Signed) NICOLAS A. DEN.

Assisting witnesses:

(Signed) RAYMUNDO CARRILLO.

(Signed) JUAN P. AVALA.

On the aforesaid rancho of the "Cañada de los Pimos," and on the same day, month and year, the Rev. Padre Fr. José Jimeno, commissioned by the most illustrious Señor Bishop, appointed Don José de los Santos Avila his agent, as set forth in the *auto* on the 14th day of these *diligencias*, accompanied by the Juez and witnesses of these *autos*, he said that the lands of this rancho, having been measured as set forth in the foregoing *auto*, he takes, and did take, the real and corporal possession of the said measured land, because it belonged to him by just titles of grants therefor, which he has from his Excellency Don Manuel Micheltorena, Governor of the Department, under date of March 16th, 1844, and September 26th of the same year. He entered upon and walked over them, pulled up herbs, scattered handfuls of earth, broke off the branches of trees, and per-

formed other proofs and acts of possession, in sign of that which he said he took of the said lands; and I, the said Juez, ordered that henceforth they should consider and acknowledge him as the real owner and possessor thereof.

The Rev. Padre Fr. José Jimeno, by his agent, asked that an authenticated copy of these proceedings be delivered to him by me, the aforesaid Juez, as evidence in future and for the preservation of his rights, and signed it with me and my assisting witnesses. I attest.

Finally, in order to avoid in all time any mistake, misunderstanding or doubt, in consequence of having given to sundry neophytes of the Mission of Santa Ynez pieces or parcels of land within the site of the college, I declare in the presence of the assisting witnesses that the whole of the place called "Anameyuemé," all the "Sanja de Cota," and "San Ysidro," except the pieces or parcels of the neophytes, which, by a decree of the Government, they cannot sell, alienate nor hypothecate, all of the "Calabasá," or "Purificacion," and all the *Planes*, smaller cañadas and hills embraced in all these places, from the Sierra to the river, and the "Cañada de Aquichumo," to remain in the legal possession of the *tridentino* college, and in testimony thereof I enter it as a *diligencia*, which I sign with my assisting witnesses. I attest.

(Signed) Nicolas A. Den.
(Signed) José Avila.

Assisting witnesses:
(Signed) Raymundo Carrillo.
(Signed) Juan P. Ayala.

On the same date this Expediente is returned to the interested party for convenient purposes.

(Signed) NICOLAS A. DEN.

The present *diligencias* are composed of eleven useful leaves; in testimony whereof I rubric it.

(Rubric)

NOTE.—During (the existence of) the Episcopal College the Rev. Padres shall celebrate one mass every year, from the present date, for the intention of the Alcalde who gave the possession of the land of the said college, for the well being of his soul, whether living or dead.

Santa Ynez, April 8, 1845.

(Signed) FR. JOSÉ JOAQUIN JIMENO.

In the same manner as in the foregoing note, through the grace of the M. Rev. Padres, one mass shall be applied for the intention of the assisting witnesses and cord-bearers, in the same terms contained in the aforesaid preceding note.

Date as above.

REMARKS.

The Señor Juez de Paz and the Señor clerk, requested the favor of the application of one mass every year for each one of them, which I promised them; but it is not hereby understood that the college is bound, because of a favor that I desired to confer or charity, cannot be in justice obligatory for one (year), and less perpetually upon a college; and, therefore, the Rev. Padres, who may

succeed me, will bestow the same charity, if it be their choice or pleasure.

Santa Ynez, &c.

(Signed) Fr. Jose Joaq'n Jimeno.

I, George Fisher, Secretary to the U. S. Land Commission, to ascertain and settle private land claims, in the State of California, hereby certify the foregoing to be a true and correct translation of "Exhibit No. 1, annexed deposition of José Joaquin Jimeno, April 12, 1854, P. L.," in case No. 609, Joseph S. Alemany vs. the United States, now on file in this office.

In testimony whereof I have hereunto signed my name, at office at the City of San Francisco, Cal., this 27th day of March. A. D. 1855.

Geo. Fisher,
Sec'y.

(Endorsed).

609.

Joseph S. Alemany.

Lands of the Catholic Church.

Translation of Exhibit No. 1, annexed to deposition of José Joaquin, Jimeno, April 12, 1854, P. L.

Filed in office March 27th, 1855.

Geo. Fisher,
Sec'y.

Recorded in Record of Evidence, vol. 19, page 527-532.

Citizen Manuel Micheltorena, General of the Brigade in the Mexican Army, Adjutant-General of the Staff thereof, Governor-Commandant-General and Inspector of the Department of the Californias.

Whereas, it is indispensable to make the necessary provision for the support of Divine worship in the Pueblo of San Luis Obispo, and in attention to the representation of the respective Rector, upon the subject I have thought proper, in the exercise of the powers with which I am invested, in the name of the Mexican nation, to grant for the church of said Pueblo, one square league (of land) in the place called "Laguna y la Huerta," situated in front of the *Casa Cural*, with the other small one in the rear of the same *casa*, of the dimensions designated by the respective diséños, which shall be correctly made under the following conditions:

1st. The said premises may be inclosed, but without prejudice to the crossings, roads and servitudes.

2d. The cultivation which the Indians, who actually live inside of the Huerta, shall not be obstructed.

Therefore, the present title, being held as firm and valid, I command that it be entered in the corresponding book, and that this be delivered to the (interested party) respective rector, in order that he may file it in the corresponding archives.

Given at Monterey, on the sixteenth day of July, one thousand eight hundred and forty-four.

(Signed) MAN'L MICHELT'A.

(Signed) MANUEL JIMENO,
Sec'y.

Entry is made of this grant in the respective book.

(Signed) JIMENO.

PUEBLO OF SAN LUIS OBISPO,
July 28, 1844.

Having examined the foregoing document, the firmness, validity and the authenticity whereof, we are satisfied, in the name of the church, we accept the donation made to us in the title of the land, and the "Huertas" therein described, and we therefore declare that the said property, and the products thereof, shall be held and respected henceforth as so much ecclesiastical property, which they enjoy as an immunity, and that no person shall occupy, sell, settle upon, donate, hypothecate the same, nor impose rent thereupon, nor transfer it in emphytenta, nor impose any imcumbrance whatever upon it, without our authority and permission, under the ecclesiastical penalty imposed by law. We ordain, therefore, that the said property be preserved and improved as much as possible for the better fulfillment of the charitable purposes thereof; and we commend to the present vicar of these churches of San Luis Obispo and San Miguel, Don Miguel Gomez, the superintendence thereof, in order that the afore-

said property may be cultivated with every attention; and we authorize him to appropriate all the nett proceeds thereof to the defraying of his necessary expenditures for divine worship, and those of his own suitable support. Finally, we command that this original title be kept in our Episcopal Archives; whereof, and of this our acceptation, declaration and decree, an authenticated copy shall be made, and it shall be delivered to the aforesaid presbyter, Don Miguel Gomez, for his information, consequent purposes, and that he carefully preserve it in the archives of his church.

His most illustrious grace thus decreed and signed, which I, the undersigned, Secretary of Council and Government, attest the day and date above written.

(Signed) FR. FRANCISCO,
Bishop of the Californias.

By order of his most illustrious Grace.

(Signed) FR. J. MA. DE JS. GONZ.,
Secretary.

I, George Fisher, Secretary to the U. S. Land Commission to ascertain, etc., etc., hereby certify the foregoing to be a true and correct translation of Exhibit No. 1, A. F., annexed to deposition of Marianno Bonilla, January 7, 1854, in case No. 609, now on file in this office.

Witness my official signature this 27th March, A. D. 1855.

GEO. FISHER.

Given at Monterey, on the sixteenth day of July, one thousand eight hundred and forty-four.

(Signed) MAN'L MICHELT'A.

(Signed) MANUEL JIMENO,
Sec'y.

Entry is made of this grant in the respective book.

(Signed) JIMENO.

PUEBLO OF SAN LUIS OBISPO,
July 28, 1844.

Having examined the foregoing document, the firmness, validity and the authenticity whereof, we are satisfied, in the name of the church, we accept the donation made to us in the title of the land, and the "Huertas" therein described, and we therefore declare that the said property, and the products thereof, shall be held and respected henceforth as so much ecclesiastical property, which they enjoy as an immunity, and that no person shall occupy, sell, settle upon, donate, hypothecate the same, nor impose rent thereupon, nor transfer it in emphytenta, nor impose any imcumbrance whatever upon it, without our authority and permission, under the ecclesiastical penalty imposed by law. We ordain, therefore, that the said property be preserved and improved as much as possible for the better fulfillment of the charitable purposes thereof; and we commend to the present vicar of these churches of San Luis Obispo and San Miguel, Don Miguel Gomez, the superintendence thereof, in order that the afore-

said property may be cultivated with every attention; and we authorize him to appropriate all the nett proceeds thereof to the defraying of his necessary expenditures for divine worship, and those of his own suitable support. Finally, we command that this original title be kept in our Episcopal Archives; whereof, and of this our acceptation, declaration and decree, an authenticated copy shall be made, and it shall be delivered to the aforesaid presbyter, Don Miguel Gomez, for his information, consequent purposes, and that he carefully preserve it in the archives of his church.

His most illustrious grace thus decreed and signed, which I, the undersigned, Secretary of Council and Government, attest the day and date above written.

(Signed) Fr. Francisco,
Bishop of the Californias.

By order of his most illustrious Grace.

(Signed) Fr. J. Ma. de Js. Gonz.,
Secretary.

I, George Fisher, Secretary to the U. S. Land Commission to ascertain, etc., etc., hereby certify the foregoing to be a true and correct translation of Exhibit No. 1, A. F., annexed to deposition of Marianno Bonilla, January 7, 1854, in case No. 609, now on file in this office.

Witness my official signature this 27th March, A. D. 1855.

Geo. Fisher.

Supreme Court of the United States.

JOHN FOSTER, ET AL.,
Pl'ffs in Error.
vs.
FRANCIS MORA,
Deft in Error.

BRIEF OF
DEF'T IN ERROR.

Ejectment for Lands in California.

The plaintiff below brought ejectment for the lands described in the complaint, consisting of the old Mission Church, and buildings, the cemetery, garden, orchard and vineyard of the Ancient Mission of San Juan Capistrano; they are shown on the map contained in the record. The defendants pleaded not guilty and set up title in one Pioche, under whom they claimed to have entered. They also set up the statute of limitations. The action was, by stipulation, tried by the Court without a jury. The Court found for the plaintiff, who had judgment. The defendants bring error. There being no bill of exceptions, the only questions presented arise on the special verdict (page 8, fol. 19.)

It is found that the premises in controversy are the old Mission Church buildings and appurtenances of the Ancient Mission of San Juan Capistrano. The plaintiff's title to them was derived under a patent issued to the Roman Catholic Bishop of Monterey and his successors, after a confirmation of the title to him on behalf of the Catholic Church. A copy of the Bishop's petition forms part of the verdict, which also sets out the confirmation by the Land Commissioners the dismissal of the appeal and the letters patent issued by the U. S. thereupon. The defendant claimed title under a grant from Pio Pico, Governor of California, bearing date Dec'r 6, 1845, to the defendant Foster and one Santiago McKinley, which was also confirmed by the Land Commissioners, the appeal therefrom dismissed and a survey by the Surveyor General confirmed. The defendant's grant is schedule D. to the verdict. (P. 18, fol. 53.)

The Mission of San Juan Capistrano dates back to Oct. 30, 1775, on which day its foundation was commenced, by Fathers Fermin Francisco Lazuen and Gregorio Amurrio. The ceremonies were interrupted by the arrival of intelligence of the revolt of the Indians of San Diego and the assassination there of Father Jayme. The cross which had been erected was left standing, the church bells hastily interred, and the Reverend founders took refuge, for the moment, in the presidio of San Diego.

*Documentos para la historia de Mexico 4ta Serie, vol. 7, page 261. (Mexico: Vicente Manuel Torres, 1857.)

*We owe the preservation of these interesting materials of Mexican history, to a royal Çedula of February 21, 1790, whereby Charles

The revolt having been suppressed and order restored, Father Amurrio returned to San Juan Capistrano accompanied by Frs. Junipero Serra and Paul Mugartegrey and an escort of troops. The cross was found standing; the bells were disinterred, a chapel erected and the foundation of the Mission formally completed with the usual ceremonies.

Relacion historica de la vida del V. P. Fray Junipero Serra: Mexico, 1787. Chap. XLIII, p. 197.

We have even a contemporary account, in print, of the planting of the vineyard and orchard, from which as far as we can gather, this is the place where the vine was first planted in California. At least this is the earliest record of it. The writer, after describing the situation of the Mission, its climate, soil, &c., says: "Having found the whole vicinity to abound in wild grape vines, so much so as to have the appearance of a vineyard, they proceeded to plant cuttings of the cultivated grape brought from Lower California; and they have succeeded in making wine, not only for the altar, but for the table, and also in rais-

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IV. directed the transcription of a large number of MSS. illustrating the early colonization and history of the various provinces of his Indian empire, for deposit in the archives. The supervision of the work so far as regarded Mexico was confided by Revilla-Gigedo, the Viceroy, to Father Fray Francisco Garcia Figueroa, under whose direction a valuable compilation was formed, consisting of thirty-two large folio volumes, which until lately existed complete in the Mexican archives, though some of the volumes have recently disappeared. The "Noticias de California" contained in vols. 6 and 7 of the printed edition of "documentos" above referred to, constituted vols. 22 and 23 of the compilation of MSS. I have been informed that the State Department in Washington possess a complete copy in MS. of the whole of these thirty-two volumes.

ing the fruits of Spain, such as pomegranites, peaches, melicotoons, quinces, &c., and they also raise excellent garden vegetables."

Relacion Historica, Sup. Cit., p. 199.

I. The origin and character of the Missions of California are known to the Court historically.

The peninsula was discovered by Cortez in 1534, and its colonization and the conversion of its inhabitants to the Catholic faith were from that time forth a cherished object with the Spanish Monarchs. Many expeditions for the purpose were dispatched at the expense of the crown during the century and a half succeeding the discovery, but though attended with enormous outlay, they were productive of no result. The latest, under Admiral Otondo, which sailed in 1683, was one of the most expensive and fruitless, and so disgusted the royal authorities, that at a "*junta general*" which, after its return assembled in the City of Mexico under the auspices of the Viceroy, April 11, 1686, it was determined that the conquest of California, by the means theretofore relied on, was a simple impossibility; and that the only mode of accomplishing it would be to invite the jesuits to undertake its whole charge at the expense of the crown. This offer was declined by the society at the time, and down to the year 1697 the Spanish monarchs had failed to acquire any permanent foothold on the extensive territories claimed by them under the name of California. [*Venegas, Noticias de California, Vol. I, p. 236, 237.*]

In 1696 the Jesuit fathers, Kino and Salvatierra, solicited from the Spanish crown permission to attempt the spiritual conquest of California. After some hesitation their request was acceeded to, and on Feb'y. 5, 1697, the necessary license was granted, on condition: 1st. That the country should be taken possession of in the name of the Spanish crown. 2nd. That the royal treasury should not be called on for any of the expenses of the enterprise, without the express order of the King. The Missionaries, to enable them to comply with the latter condition, sought and collected the contributions of pious persons, and established a fund which from very modest beginnings, ere long attained magnitude and importance, and was known as the "Pious fund of California." From it were defrayed the support of the missionaries, the expense of erecting buildings, reducing the land to cultivation, providing and transporting tools, implements, provisions, clothing for the neophytes, instructing them in such useful arts and manufactures as were suitable to their capacity and wants, and for many years paying the salaries of the soldiers and officers of the small garrisons (*"escoltas"*) employed in defence of the Missions. This last mentioned charge was, however, afterwards assumed by the crown. The Franciscans succeeded the Jesuits, on the expulsion of the latter order from Mexico, (1768) and, resigning the Missions of the peninsula to the Dominicans, pushed up northward in 1769, and began the foundation of the Missions of Upper California, of which they continued thereafter in charge. In 1833 an act was passed by the Mexican Congress, directing the secularization of the Missions; that is, their reduc-

tion to the form of parishes, and the substitution of secular priests or curates for the Missionary priests of the Franciscan and Dominican orders. Its execution, however, when commenced, led to such unhappy results, that on Nov. 7, 1835, an act was passed suspending the secularization, and directing the maintenance of the former order of affairs. Under this the Franciscans remained in charge of our Missions down to the American conquest.

In 1836 the Californias were erected by the Holy See into a Bishopric, at the request of the Mexican Government, and the Rev. Fray Francisco Garcia Diego, till then President of the Missions, was invested with the newly founded mitre. Prior to setting out to take charge of his diocese he addressed a communication to the Supreme Government setting forth the evils experienced under the secularization commenced, the mal-administration of the *mayordomos*, and *administradores* appointed under that law, and presenting eight distinct petitions for relief, all of which were responded to favorably by the Government. They are printed in the addenda to the record and furnished under the stipulation, page 25, fol. 76, together with the act suspending the law of secularization, the proclamation of Micheltorena of March 29th, 1843, and the communication from the general Government to the Governor of California of Nov. 14, 1845, forbidding the alienation by the Departmental Government of any of the property of the Missions.

II. The Catholic religion being the only one recognized by Spain, and the canon law, which is the law of the church, forming part of the body of the Spanish law, the license of the Monarch to undertake the conversion of the natives of California involved incidentally the permission to appropriate so much land as should be needed for the purpose, in the manner and on the plan on which it was undertaken.

The country was a wilderness; everything needed for the support of the missionaries and the converts, and the maintainance of divine worship had to be at first imported from Mexico, and thereafter produced on the spot. Churches and buildings for the use of the missionaries were erected, cemeteries laid out, gardens and orchards were enclosed and established. From these were produced the bread, wine and oil used in the sacraments of the church, and in them the rude natives of the country were instructed in agriculture. There were first planted vine, the olive and the wheat, destined in after times to become such a prolific source of wealth to California, and other fruits and cereals were also introduced into the country; the small parcels of land at each mission thus appropriated became the *glebe*, from the fruits of which the ministers of religion were in part supported. They became church property, by dedication and appropriation, with the full knowledge, approbation and assent of the Crown. Such a title was perfect under the laws of Spain and Mexico.

[I happen to be possessed, as a historical curiosity, of an original return of the state of the missions in the year 1823 and '24, by which it appears that San Juan

Capistrano was at that date the eighth in importance, the number of Indian converts then maintained at it being 1060. The total quantity of land appropriated to ecclesiastical uses there, and claimed in this action, was and is the very modest area of 47 acres.]

III. The patent put in evidence and the proceedings before the Land Commissioners which resulted in its issue, constituted a recognition and adjudication of the validity of the title of the church to the premises and an investiture of the Bishop of the diocese as the lawful representative of the mystical body beneficially interested.

As to the defence.

It is founded on a sale at auction by Pio Pico, which is claimed to have been made under authority derived from the Departmental Assembly.

There are several objections to it.

1. The land was already private property, and there was no power to confiscate it. Indeed it is not certain that confiscation was intended. It seems more probable that whatever proceedings were taken by the local authorities towards selling the church property, were based on a misunderstanding of the secularization act of 1832.

2. Even if the lands had been public lands, or the title to them had been in such plight that Mexico might nave resumed it, or disposed of the property, no such power existed in the Departmental Assembly; it pertained to the general Congress.

3. The grant refers for its authority to resolutions of the Departmental Assembly of July 4, 1845. The record of that day's proceedings, however, shows nothing even purporting to authorize such a sale or disposal of the property. Nor had the departmental assembly power to do it.

Bases de organizacion politica de la Republica, &c., (Bases of Tacubaya,) Tit. IV., (Poder legislativo) and Tit. VII., (Gobierno de los departamentos) colleccion de decretos, &c., July, 1842 @ June, 1843, p. p. 443, 446, &c.

4. I am equally unable to find even a nominal authority for the sale in the proceedings of the Assembly of Oct. 25, 1845, quoted below in support of it. But if I am mistaken in this suggestion, I submit that as the grant on its face purports to be based on the resolutions of July 4, it cannot be aided by resolutions of some other and different date. The Governor advertises that he will sell the property under the authority of resolutions adopted July 4th, and proceeds to do so. Referring to the proceedings of that date, it is obvious that they confer no such authority. Hence the owner was not called upon to take any steps to protect his property, nor would any prudent purchaser come forward to bid. The sale under such circumstances is simply an attempt by the Governor to take, by his mere authority, the property of one person and confer it on another.

5. Independent of the original want of power in the Departmental Assembly, it would appear that they were expressly forbidden to take any action of the kind. It would seem that their proceedings were promptly made known to the General Government, which, on the 14th

of Nov. issued the orders of that date, forbidding any sale under them which are printed in the addenda to the record. (p. p. 19, 20.) Pico's sale to Foster and McKinlay (supposing it genuine,) being for $710, *to be paid in hides and suet in August, 1846*, the probability is strong that this order of the Supreme Government put an end to the whole business,—especially as before the day of payment came round, the country had passed to the control of the U. S., by the capture of Monterey, July 7, 1846.

6. We have admitted for the purposes of the trial below that the defendant's survey has been confirmed by the Surveyor General; and this the plaintiff in error deems equivalent to a patent. It is to be observed, however, that the Act of Congress of June 14th, 1860, rendering a confirmed survey equivalent to a patent was repealed by that of July 1, 1864, (Statutes at Large, XIII, p. 332.)

IV. The following authorities are referred to in support of the case of the defendant in error:

Terrett vs. *Taylor*, 9 Cranch's Rep. 42.
Town of Pawlet vs. *Clarke*, id. ib. 292.
U. S. vs. *Workman*, 1 Wall, 745.
Beard vs. *Federy*, 3 id. 478.

Act of Mexican Congress, suspending secularization of the Missions Nov. 7, 1835. Arrillaga recopilacion, &c., 1835, p. 582.

Letter of Bishop Diego to the President, Nov. 7, 1840, and the President's decree of the same date in response thereto, restoring the Missionary establishments to the clergy.

Miller v Dale, 2 Otto (US) Rep 473.

Proclamation of Gov. Micheltorena on assuming the government of California, May 29, 1843, ordering the redelivery of the Missions to the priests in accordance with the decree of the President. This is given also in Rockwell, p. 469.

Communication of the Minister of Justice and Public Instruction to the Governor of California, forbidding the alienation of the property of the Missions, Nov. 14, 1845.

Constitution of 1824, Tit. I, No. 3, and Tit. VII, No. 171. Galvan: colleccion de leyes, &c., Tom. III, p. p. 79 and 105.

Constituent Act of May 2, 1835, Nos. 1 and 2, and Oct. 23, Art. I. Arrilaga Recopilacion de leyes, &c., 1835, p. 151 and 558.

The text of these Mexican documents not contained in accessible printed volumes (with translations) is contained in the addenda to the record printed in pursuance of the stipulation of Oct. 21, 1875. Record p. 25 fol. 77,) and furnished herewith.

DOYLE, BARBER & SCRIPTURE,
Att'ys for Def't in Error.
JOHN T. DOYLE,
of Counsel.

ADDENDA.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF CALIFORNIA.

FRANCIS MORA,
AGST.
JOHN FOSTER,
AND OTHERS.

This cause having been tried on the theory adopted by counsel for both sides and approved by the court, that the history of the Missions of California, and the proceedings of the Supreme and Departmental Governments of Mexico and California (Legislative and Executive,) with respect to the said Missions and the powers of the Governors of the Provinces of Mexico, are matters of public history to be taken notice of by the Court judicially: It is hereby stipulated (for abundant caution), that the same understanding shall be in force in the proceedings in error, and that any Mexican public document desired to be used by either party in the Supreme Court, may be printed and furnished as addenda to the record.

On the part of the plaintiff in error, reference is particularly made to the proceedings of the Departmental Assembly; and on the part of the defendant in error, to the petitions of Francisco Garcia Diego, Bishop, etc., to the Government of Mexico, and the response thereto. Of these, and any others desired by either party, copies are to be furnished reciprocally, prior to the commencement of the next term of the Supreme Court.

Dated Oct. 21, 1875.

DOYLE & BARBER,
Attorneys for Plaintiff.
JOHN B. FELTON,
EDMOND L. GOOLD,
For Defendants.

Filed 2d November, 1875.

L. S. B. SAWYER, Clerk.

MINISTERIO DE LO INTERIOR.

Peticiones que ha hecho al Supremo Gobierno el Y. Sor. Obispo de California en su nota de 7 del corriente y carta particular de la misma fha.

"1ª. Desde que se quitaron á los misioneros las temporalidades, que ellos mismos crearon y aumentaron con su trabajo personal, y con sus sínodos, entraron á disfrutar los bienes de las misiones los seculares y sus familias, y entre ellos algunos q^{e} yo conozco, á quienes no se podia fiar ni aun una pequeña cantidad. Ya se deja entender la ruina de tales bienes en semejantes manos. En el Ministerio de V. E. deben existir los reclamos que sobre esto tengo hechos, y por los que el Congreso General dió una ley, suspensiva de la que mandaba la secularizacion de misiones, la que hasta ahora, segun entiendo no se ha cumplido, quizá por justas consideraciones del Gobierno.

En posteriores reclamos que hize en el año de '36, informé al Supremo Gobierno de los males que los misioneros padecen y entre ellos no es el menor, q^{e} los administradores de las misiones se apoderaron de las casas en que vivian los Padres: unas casas fabricadas por los religiosos, y en cuya construccion invirtieron los sínodos que percibian y el trabajo de sus manos, se han visto reducidos á vivir allí, como arrimados, y con bastante incomodidad, como yo mismo lo vi. Tienen en la misma habitacion á unas gentes q^{e} en muchas noches no los dejan descansar por las embriaguezes, juegos ó bailes, que con escándalo están presenciando los neófitos! ¡Vida insufrible ciertamente! Vida amarguísima p^{a} unos religiosos recoletos, y tanto que muchos de ellos han pensado abandonar las misiones y retirarse á buscar la tranquilidad y paz de sus espiritus! ¡Vida penosa que ha retraido y retrae á muchos de ir á las misiones por no esponerse á tantos padecimientos y desprecios de su carácter! Mas no se crea por esto que quiero se lleve á efecto la entrega de las temporalidades á los religiosos. Sé muy bien, y aun lo tengo dicho al Gobierno, q^{e} dentro de breve ya no habrá nada de los bienes que tenian aquellas opulentas misiones, los q^{e} recibieron los administradores, cuando los Padres las entregaron. Lo que quiero es que para las misiones nuevas q^{e} se hayan establecido, se tomen medidas legislativas para

que no se repitan tan graves desórdenes. De otro modo ¿qué padre misionero habrá que quiera trabajar por aumentar los bienes de los índios infelices, si sabe por esperencia q^{e} se los han de quitar á sus legítimos dueños, y se han de entregar á otros p^{a} q^{e} los disfruten, roben y tiren, sin haberles costado ningun trabajo? ¿Cual será el religioso que quiera hacer casa ni plantar huerta para su recreo y comodidad, si ha visto que con la mayor injusticia se las quitan y entran á poseerlas hombres que antes se socorrian con limosnas dadas por los mismos misioneros, y que repentinamente se mudan en señores y tienen los infelices Padres q^{e} vivir á sus espensas? En lo que insisto é insistiré siempre, es en que queden á los misioneros las casas y huertas q^{e} ellos ó sus antecesores hicieron, q^{e} estan contiguas á las Iglesias y con inmediata comunicacion á ellas. Los administradores (como que tienen á su disposicion á los indios y los intereses de las misiones), pueden hacer casa para ellos y dejar á los Padres quietos y en paz. Esta medida la juzgo tan necesaria, que si no se toma, no habrá quien quiera ir á servir las dichas misiones. y yo desde ahora lo prevengo al Supremo Gobierno. Y si p^{a} los misioneros es una medida tan necesaria ¿qué se deberá hacer con respecto al Obispo? ¿No será una cosa bien dura que mientras puede edificar su casa, no tenga en donde recojerse con su familia, ni en donde poner sus estudiantes, y mitros que lleva, ni en donde dar principio á su seminario? Por esto pues suplico al Supremo Gobierno, que se dé una órden (la misma que yo llevaré) p^{a} que se entreguen á los Padres misioneros las casas y huertas de las misiones, y q^{e} la de San Diego, ó la de San Luis Rey sea ocupada interinamente por el Obispo y sus familiares, juntamente con el Padre misionero, hasta que el Obispo pueda hacer su casa episcopal y el edificio p^{a} su seminario.

2^{a} Los administradores niegan por lo regular los servicios de los índios á los Padres, y esto aun pagándoles su trabajo; claro es que de nada me servirá el local para mis fábricas si no tengo brazos que me las construyan pagándoles lo justo. Esto exije otra disposicion del Supremo Gobierno para que se me franqueen sirvientes con sus salarios equitativos y no arbitrarios. Justamente suplico se me dé el terreno para edificar mi iglesia, mi casa y mi seminario.

3^{a} Bien sabe el Supremo Gobierno que no tengo en mi obispado mas eclesiásticos que los religiosos Fernandinos, Zacatecanos y Dominicos de esta provincia de Méjico, y si los prelados de estas corporaciones me quitan á sus súbditos, no tendria

quien ocupara su lugar por ahora. Segun he sabido el R. P. Provincial de Santo Domingo, pretende ó piensa quitar á los religiosos sus súbditos las gracias que por misioneros tienen en su órden, y esta medida influiria mucho para que aquellos se vengan y p.ª q.e otros no vayan á las misiones, pues debe retraerles la consideracion de que los sacrificios que hacen les son inútiles en su religion. Ruego pues al Supremo Gobierno que oficie al R. P. Provincial para que no se haga innovacion alguna y que sigan los misioneros lo mismo que están, hasta que el obispo tenga clérigos que puedan ocupar su lugar, y ellos puedan dedicarse á las conversiones vivas. Quiero ademas que el Gobierno me recomiende con los RR. PP. Guardianes de Guadalupe de Zacatecas y San Fernando, para que me auxilien como religiosos, y que si algunos me quieren acompañar no se les impida.

4ª. El Supremo Gobierno pidió al Santo Padre, por conducto de nuestro enviado á Roma, que se me concediera llevar á mi obispado á cuantos sacerdotes quisieran acompañarme y fueran de mi aprobacion, sin que sus respectivos prelados pudieran estorbarlo. Tal facultad no vino entre las que tengo en mi poder: quisiera por tanto que se le reclamara al Señor Montoya sobre el particular, y en el entretanto que el Gobierno se interesara con los prelados, cuando alguno ya sea del clero secular ó regular, le escriba que quiere acompañarme y yo diga al mismo Gobierno que es de mi aprobacion.

5ª. Como una de mis principales miras debe ser la conversion de los gentíles y propagacion de la fé, es indispensable que tenga operarios para el logro de mis deseos. Los colegios Apostólicos de la República están acabando, excepto el de Guadalupe de Zacatecas, el que apenas podrá cubrir las diez misiones de que se hizo cargo. Creo pues de necesidad, se me conceda licencia para fundar en mi obispado un colegio de misioneros para que estos sigan formando nuevas misiones ó pueblos; y suplico al Gobierno que por conducto de nuestro enviado á Roma, impetre del Santo Padre que pueda yo proceder á la fundacion, aunque sea con un solo religioso para que este dé hábitos y profesiones á los que quieran dedicarse á la importantisima conversion de gentíles. Igualmente suplico se me dé para local de este colegio la isla llamada de los Angeles, ú otro terreno que sea á propósito.

6ª. Las niñas en lo general han carecido de educacion y enseñanza para que sean útiles á la sociedad: quiero pues fundar en el lugar de mi residencia un colegio de educandas, para el que tambien necesito terreno suficiente.

7ª Por una anomalía que no entiendo, se han estado cobrando en mi obispado los diezmos por parte del Gobierno civil de la Sonora. Debe pues prohibirse esto á aquellas autoridades, para que queden los fie'es libres para darlos á la iglesia en lo sucesivo, los que, aunque pocos, ayudarán á los grandes proyectos de pública beneficencia que tengo formados.

8ª El Gobierno gravó al fondo piadoso de mi iglesia con un préstamo que hizo el Sr. Teran de sesenta mil pesos, con el ruinoso lucro del 2 pª mensual. Se comprometió el Gobierno á abonar doscientos y mas pesos diarios, segun estoy informado, para estinguir esta deuda ominosa. Cumplió éste compromiso por un poco de tiempo y despues lo ha dejado al cargo del fondo, quien por no perder su capital, amenazado por las mismas condiciones del préstamo, ha estado haciendo sacrificios, asi para amortisar la deuda, como para pagar los réditos mensuales. En tales circunstancias se halla dicho fondo sin arbitrios para dar los sinodos á los misioneros cuyos libramientos tiene pendientes y sin poderme ayudar á mí en los gastos que debo hacer para marchar á mi diócesis, los que son muchos, como no se oculta á la penetracion de V. E. Es pues justicia que pido el se me arbitren algunos medios por el Gobierno para cubrir cuanto ántes la deuda del Señor Teran para que quede libre el fondo.

En mi oficio se me pasó decir que deseo poner mis edificios ó mas bien fundar una poblacion en un rancho qº se halla frente de San Diego, así por la comodidad que presenta, de agua, de leña, etc., como por no estar litoral y espuesta á la invasion de algun pirata. Es ademas de muy buen temperamento. Si el Gobierno quisiera poner allí alguna fuerza militar, seria de suma importancia pª la comunicacion con Sonora, pues contendria á los indios del Rio Colorado, y tambien seria muy al caso pª intentar la reduccion de estos pobrecitos, y su felicidad espiritual y temporal. Estoy persuadido qº con esta medida, se facilitaría la comunicacion con el interior de nuestra República, y el Gobierno tendria mas frecuentes noticias de aquel departamento."

Noviembre 17 de 1840.

El E. S. Presidente se ha servido proveer de conformidad con todo lo pedido por el R. Obispo de Californias en esta nota, hasta donde alcanzan las atribuciones de S. E. y da lugar el decreto del Congreso de 7 de Noviembre de 1835, que mandó reponer las misiones á su antiguo estado, á cuyo fin se estenderá órden general al Sr. Gobernador de Californias, pª que por medio de las autoridades subalternas, se restituya sin dilacion ni embarazos á los Padres misioneros, las posesiones y bienes qº estaban bajo su administracion pª la conversion de los infieles; y esa y las demás órdenes qº han de espedirse en obsequio de la peticion del Reverendo Obispo, se pondrán en mano de S. Ilma. pª su mejor éxito; y se le dará otra órden á fin de qº el Sr. Gobernador le auxilie en cuanto importe á la fundacion del obispado. Y por lo qº toca á los terrenos de que no estén ó hayan estado en posesion de las misiones, líbrese oficio á la junta directiva del Banco á fin de que acuerde con S. Ilustrísima hasta donde pueda su notoria piedad, lo que mas facilite sus peticiones; y en los que no alcancen los arbitrios del Banco, lo manifieste al Gobierno para que se inicie al poder legislativo ó se provea como haya lugar en derecho. Y contéstese con este Decreto al Reverendo Obispo.

Es Copia. México Noviembre 21 de 1840.

I. de ITURBIDE.

TRANSLATION. A.

MINISTRY OF THE INTERIOR

Petitions made to the Supreme Government, by the Most Illustrious Señor Bishop of the Californias, in his communication of the 7th inst., and a private letter of the same date.

From the time the temporalities they created and augmented with their personal labor, and their stipends, were taken away from missionaries, the seculars and their attendants, and amongst them some whom I know not to be worthy of the least credit, have entered into the possession of the property of the missions. The destruction of said property in such hands, is a matter of course. There should exist in the ministry of Your Excellency, reclamations which I have made upon this subject; and whereupon the General Congress passed a law suspending that which directed the secularization of the missions, which, as I learn, up to the present time, has not been carried into effect, probably by just considerations of the Government.

In later remonstrances, which I made in the year 1836, I notified the Supreme Government of the evils which the missionaries have to contend with, and not the least amongst them, that the administrators of the missions took possession of the houses in which the fathers were living — houses built by the religious, and in the construction of which they invested the stipends which they were receiving, and the labor of their hands. They have been compelled, as I myself can witness, to live there as so many bankrupts, and with great inconvenience.

They keep in the same habitations people, who nightly, by their intoxication, gambling or dancing, which, with shame, the neophytes witness, disturb their rest. Verily an insupportable life! What a miserable life for a few devoted religious, and so much so, that many of them have contemplated the abandonment

of the missions, and seek peace and tranquility of mind in retirement! Tormenting life, that dissuades many from going to the missions, not to expose themselves to so much suffering and disregard for their character. I do not wish it to be believed from this that I wish the delivery of the temporalities to the religious to be carried into effect. I well know, and I have already communicated it to the Government, that, within a short time, there will be nothing left of the property of those opulent missions, which the administrators received when the fathers delivered them over. What I desire is, that for the new missions that may be established, some legislative action may be taken to prevent the recurrence of such flagrant disorders. Otherwise, what missionary father is there, who will labor to increase the property of the unhappy Indians, if experience teaches him that they are to be taken away from their legitimate owners, and delivered to others to enjoy, without having cost them any anxiety or labor? Who is the religious that would desire to build a house or plant an orchard, for his recreation and comfort, if he sees that they are taken away from him, and are taken possession of by men who have before been supported by alms from the said missionaries, and who suddenly become great señors, while the unhappy fathers have to live at their own expense?

What I insist upon, and will always insist, is that the houses and orchards which they or their predecessors have made, which are contiguous to and in immediate communication with the churches, remain to the benefit and use of the missionaries.

The administradores (as they have at their disposition of the Indians and property of the missions) can build houses for themselves, and leave the fathers in peace and quietude. I deem this measure of so great necessity, that if it is not adopted, there will not be any one who will desire to go to serve the missions. From the present time, I lay the matter before the Supreme Government, and if it is a measure so necessary for the misssionaries, what shall be said with respect to the Bishop? It would be a deplorable thing that while he erects his house, he should have no place in which to collect his family, or where to put his students and ministers, nor where to commence his seminary.

Therefore, then I pray the Supreme Government:

1st. That an order be issued (to accompany me) for the delivery of the houses and orchards of the missions, to the missionaries; and that in the interim, that of San Diego or San Luis Rey

may be occupied by the Bishop and his attendants, together with the Missionary Father, until the Bishop can build his episcopal house, and the edifice for his seminary.

2d. As might be anticipated, the administradores refuse the fathers the services of the Indians, and this even when offering them liberal pay. This demands another disposition of the Supreme Government, in order that I may be furnished with servants at equitable salaries. At the same time I pray that the land upon which to build my church, my house and my seminary may be given me.

3d. The Supreme Government is well apprised, that I have in my bishopric no other clergy besides the Fernandine, Zacatecan and Dominican religious of this Province of Mexico; and if the Prelates of these orders should deprive us of their subjects, I would not have any one with whom to fill their places for the present. As I have been informed, the Reverend Father Provincial of Santo Domingo intends or contemplates withholding from the religious, his subjects, the favors which, as missionaries in their order, they are enjoying; and this measure would tend greatly to induce the former to leave, and prevent others from going to the missions, as it would suggest to them the consideration that the sacrifices which they make, are unprofitable to them and their order.

Therefore I pray the Supreme Government to notify the Reverend Provincial Father not to make any innovation; and that the missionaries continue as they are until the Bishop shall have clergymen to occupy their places, and till they may be able to devote themselves actively to conversions. I also desire the Government to commend me to the Reverend Fathers, Guardians of Guadalupe of Zacatecas and San Fernando, in order that they may supply me with religious; and that if any desire to accompany me, they be not forbidden.

4th. The Supreme Government asked the Holy Father through our envoy to Rome, that I should be permitted to carry to my Bishopric, as many clergymen as I should desire to accompany me, and should meet my approbation, without their respective prelates being able to prevent it. This authority did not reach me with those which I have in my possession. I would desire, therefore, that this particular be laid before Señor Montoya, and the meanwhile, the Government will use its influence to that effect, with the prelates, when any one, whether of the secular or regular clergy shall give notice thereto of his desire to accompany me, and I manifest my approbation to said Government.

5th. As the conversion of the heathen and the propagation of the faith is one of my principal objects, it is indispensable that I have assistants for the accomplishment of my desires. The colleges approved by the Republic, except that of Guadalupe and of Zacatecas are failing. and this is scarcely able to supply the ten missions now under its charge. I therefore believe it to be necessary to permit me to establish a College of Missionaries in my bishopric that these may continue forming new missions or pueblos; and I pray the Government through our envoy, to supplicate the Holy Father that I may proceed, even with but one religious, to the foundation in order that the latter may confer habits and accept professions of those who may desire to dedicate themselves to the all important conversion of the heathen. Likewise, I request that the island called "Los Angeles" be given to me for the location of this college, or some other tract of land suitable for that purpose.

6th. The girls, generally, have suffered the want of the education and instruction necessary to make them useful to society. Therefore, I desire to establish at the place of my residence, a female college, for which also I need an adequate tract of land.

7th. By an anomaly, which I do not understand, the tithes have been collected in my bishopric on behalf of the civil government of Sonora. Those authorities should be prohibited from doing this, so that the faithful may be at liberty to give them, henceforth to the church; the amount, although small, will assist in the grand schemes of public beneficence that I have formed.

8th. The Government burdened the Pious Fund of my church by a loan which it made of Señor Teran of seventy thousand dollars at the ruinous interest of two per cent per month, the government obligated itself to pay (as I am informed), upwards of two hundred dollars daily, for the purpose of extinguishing this ominous debt. For a short time it fulfilled this promise, and afterwards it has left it against the Fund, which in order to save its capital, to menaced by the very terms of the loan, has been making sacrifices to reduce the debt, as well as to pay the monthly interest; under the circumstances, the said Fund has become destitute of the means of paying the stipends to the missionaries whose drafts are outstanding, and unable to render me any assistance in the expenditures which I should make to proceed to my diocese, which, as your Excellency is well aware, are great. It is therefore just that I ask the Government to provide some means to settle the debt of Señor Teran immediately, in order that the Fund may remain unembarrassed.

I neglected to mention in my communication, that I desire to locate my edifices, or rather to form a settlement on a rancho situate in front of San Diego, as well for the conveniences thereof for water and wood, as for not being littoral and exposed to the invasion of any pirate. Moreover, its climate is very good. If the Government should desire to place a military force there, it would be of the greatest importance to the communication with Sonora, because it would repress the Indians for the *Rio Colorado*, and it would also be very important in an attempt to subdue these miserable beings, and to their temporal and spiritual happiness. I am persuaded that the communication with the interior of our republic by this means would be facilitated, and the government would have more frequent intelligence from that department."

November 17, 1840.

His Excellency, the President, has been pleased to decree in conformity with everything for which the Reverend Bishop of the Californias has petitioned in this communication to the full extent of his authority, and in conformity with the decree of Congress of the 7th November, 1835, which ordered the missions to be restored to their former condition; for which purpose a general order shall be issued to the Señor Governor of the Californias for the restoration by means of the subaltern authorities, without delay or impediment of the possessions and property used by them under their administration for the conversion of the heathen, to the missionary fathers, and this and all other orders that shall be issued in attention to the petition of the Reverend Bishop, shall be placed in the hands of His Grace for his greater success; and another order shall be delivered to him for the Governor to render him assistance in whatever may pertain to the establishment of the bishopric. And so far as respects the lands, which are not and never have been in the possession of the missions, let an *officio* issue to the Board of Directors of the Bank, urging them to accede to the requests of His Grace, so far as their well known piety prompts them in whatever may facilitate his petitions; and so far as the means at the disposal of the bank are insufficient, let notice be given to the Government that it may initiate the neces-

sary provisions by the Legislative power, and may take such other steps as may be proper. And let the Reverend Bishop be replied to by this decree.

[A COPY.]

Mexico, November 21st, 1840.

(*Signed*) I. DE ITURBIDE.

Noviembre 4 *de* 1835.—*Ley.—Suspension del cumplimiento de la que provino la secularizacion de Misiones de Californias.*

Hasta que hayan tomado posesion los curas de que habla el artículo Segundo de la ley de 17 de Agosto de 1833, (Recopilacion de ese mes, pág. 19), el Gobierno suspenderá la ejecucion de sus demás artículos, y mantendrá las cosas en el estado que tenian ántes de dicha ley.

TRANSLATION. B.

November 4, 1835.—*Law.—Suspension of the operation of the Act whereby the Missions of California were secularized.*

Until the curates mentioned in the second article of the law of August 17, 1833, shall take possession, the Government will suspend the execution of the other articles of said law, and mantain things in the state they were in before said law was enacted.

Proclamacion del General Micheltorena, de Marzo 29 de 1843, ordenando que las Misiones se pongan otra vez en cargo de los Padres.

Manuel Micheltorena, General de Brigada del Ejército de la República, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General, é Inspector de ambas Californias.

GOBIERNO DEL DEPARTAMENTO DE CALIFORNIAS.

Siendo una de las ámplias instrucciones, con que se halló investido el infrascrito General y Gobernador, la de examinar la situacion que guardan las misiones todas en su gobierno, adelantos y ramos de contabilidad, asi como para su arreglo, y habiéndole trasmitido el Supremo Gobierno nacional, todas sus facultades, segun consta de Orden Suprema, fecha 11 de Febrero de 1842, de acuerdo y anuencia de los MM. RR. PP. Fr. José Joaquin Jimeno, Fr. José de M.ª de Jesus Gonzalez Rubio, á quienes al efecto hice comparecer ante este Gobierno, tanto como á Presidentes de las otras Misiones, como á nombre y representacion del M. R. P. Presidente Vicario foraneo Fr. Narciso Duran, bien impuesto de todo lo que fué necesario, y considerando que ya los vastos é inmensos terrenos, propiedad antes de las Misiones, estan repartidos á los particulares, cómo fué en la época en que se hizo exigencias del país; que aquellos establecimientos piadosos y beneficos al órden social, tanto como á la religion, por la reduccion de los salvajes al catolicismo y á una vida agricultora y civil, estén ya reducidos casi á las huertas y cuadros de los templos y edificios; que los MM. RR. PP. Ministros no tienen subsistencia sino mercenaria, y que el culto divino sin prosperar se mantiene á penas; que los indios por su natural flojedad por el recargo del trabajo, escasez de alimentos y desnudez (aquellos que no tienen acomodo particular ó demision) prefieren remontarse y morir impenitentes en los desiertos boscosos, arrastran una vida de esclavitud, llena de todas las privaciones y sin ninguna de los goces sociales; que ésta continua imigracion de indígenas de los particulares á la Mision de la Misjon á los particulares ó á los bosques atrasa mas y

mas la agricultura en lugar de atraer á los gentiles del gremio de nuestra santa religion; qué en la administracion de las misiones se han cometido algunos fraudes y despilfarros notorios y que lamenta todo habitante del país, y que no hay otro medio de reanimar el esqueleto de un gigante, cual es el residuo de las antiguas misiones, sino recurrir á la esperiencia y apuntalarlo con las palancas de los poderes civil y eclesiástico, todo bien considerado y pesado maduramente, he tenido á bien resolver los artículos siguientes:

1ª El Gobierno del Departamento mandará entregar á los MM. RR. PP. (que para cada una nombre el Prelado respectivo) las Misiones de San Diego, San Luis Rey, San Juan Capistrano, San Gabriel, San Fernando, San Buenaventura, Santa Barbara, Santa Inez, La Purísima, Santa Clara, San Antonio y San José, las que continuarán en lo sucesivo por los MM. RR. PP., como en tutoria de los indígenas, del mismo modo que las tenian ántes.

2ª Como lo hasta aquí hecho la política lo constituya irrevocable, no podrán las misiones reclamar ningun terreno de los hasta hoy concedidos, y sí recoger los ganados, enseres é utensilios que tengan prestados sus RR. Curadores ú Administradores, acordando el tiempo ó el modo con los deudores ó tenedores armoniosamente.

3ª Cuidarán igualmente de congregar los neófitos dispersos esceptuando: Primero, los legalmente esceptuados de su neofia por el Supremo Gobierno Departamental. Segundo, los que á la fecha de este decreto existen acomodados con particulares; entendiendose que aun ambas clases si voluntariamente quieren y prefieren volver á sus misiones, serán admitidos y recogidos previa conocimiento de los amos y R. R. misioneros.

4ª El Gobierno Departamental, en cuya posesion ha estado hasta hoy las misiones, en virtud de las ámplias facultades con que se haya investido y reproduciendo los *considerandos* antedichos, autorizo á los RR. PP. Ministros pª qª de los productos de las Misiones proveen á los gastos indispensables de la reduccion, alimento, vestido, y demas necesidades temporales de los indios, y que tomen del mismo fondo la parte moderada qª necesiten pª sus propios alimentos, pª el sueldo económico del mayordomo, y para el sostenimiento del culto divino; con la condicion de qª quedan obligados bajo su honor y conciencia de entregar al erario, previo aviso de los RR. PP. á este Gobierno y órden expresa por escrito y firmada del infrascrito Gobernador Comandante General é Inspector, pª socorros, alimentos, vestuario de las tropas y atenciones de empleados civiles, la octava parte del total anual de

los productos y esquilmos de todo género; teniendo cuidado de presentar por conducto de sus prelados un informe exacto y verídico á fin de año del número de neófitos, bienes semovientes y emomentos y de toda clase de frutos, ó de su valor representativo perteneciente á cada mision.

5ª El Gobierno Departamental que se precia de religioso á la vez qª de enteramente Californio, y como tal interesado del mismo modo qª todos y cada uno de los habitantes de ambas Californias en el adelanto de la santa fé Católica y prosperidad del país, ofrece todo su poder para auxilio de las misiones, y como Comandante General, el de las armas, para escoltarlas, defenderlas y sostenerlas, así como tambien lo serán las propiedades y garantías individuales y particulares en la posesion y conservacion de los terrenos que hoy dia de la fecha tengan, ofreciendo no conceder ninguna nueva sin el informe de las repetidas autoridades de los MM. RR. ministros, notaria desocupacion, no cultivo, ni necesidad.

Y despues de haber sido firmado el original, en prueba de validez y solemnidad, en esta ciudad de Los Angeles de la Alta California, por los MM. RR. P. Presidente Vicario foraneo, Fr. Narciso Duran, y como Presidentes, los subsignados de las otras misiones por el Secretario Provicional Oficial primero del Gobierno, Ciudadano Francisco Arce y por el General de Brigada del ejército Mejicano, Gobernador Comandante General é Inspector, Manuel Micheltorena.

Por tanto mando se comunique á los RR. PP. á los Sres. Prefectos qª se publique por bando pª inteligencia y cumplimiento de todas las autoridades civiles y militares. Dado en la Ciudad de Los Angeles á veinte y nueve dias del mes de Marzo de mil ochocientos cuarenta y tres.

MANUEL MICHELTORENA.

FRANCISCO ARCE,
Secretario Provisional.

FR. JOSE MARÍA DE JESUS GONZALES,
Presidente y Vice-Prefecto de las Misiones del Norte.

FR. JOSE JOAQUIN JIMENO,
Presidente de las Misiones del Sur.

TRANSLATION. C.

Proclamation of General Micheltorena of March 29, 1843, ordering the Missions to be again placed in charge of the Priests.

Manuel Micheltorena, Brigadier General in the Army of the Republic, Adjutant General of the Staff of the same, Governor Commandant General, and Inspector of both Californias.

GOVERNMENT OF THE DEPARTMENT OF THE CALIFORNIAS.

It being one of the ample authorities, with which the undersigned General and Governor is invested, to examine the present conditions of the missions, their government, state of prosperity, together with the accounts of the same, as also to provide for the regulation thereof; and the Supreme Government of the nation, having conferred all of its authority for this purpose, as is set forth in the supreme order, dated the 11th of February, 1842, acting in concert and harmony with the Reverend Fathers, Fr. Jose Joaquin Jimeno, Fr. Jose de Ma. de Jesus Gonzales Rubio, who, for this purpose, were summoned to appear before this Government, as also the Presidents of the other missions, in the name of, and in representation of the very Reverend Father, President, Vicar Foraneo, Friar Narciso Duran, having made the necessary examination, and in consideration of the fact, that the vast tracts of lands, which heretofore were the property of the missions, are distributed to individuals, which was so done, when the exigencies of the country required it; that those pious establishments so beneficial to religion, and social order, as well by reducing the savages to Catholicism, as teaching them to follow agricultural and civil pursuits, are reduced almost to the orchards, the church buildings, and the squares surrounding the same; that the Reverend Fathers Ministers, are without subsistence, except such as they receive mercenarily; that divine worship can scarcely be maintained; that the Indians on account of natural idleness, and disinclination to labor,

being naked and in want of food, (those who are not provided for,) seek the wilderness, dragging out a miserable existence, full of privations, and without any of the enjoyments of social life; that this continual migration of the Indians from the service of individuals to the missions, and from the missions to individuals or to the wilderness, more and more retards the interests of agriculture, instead of attracting the Indians to the bosom of our Holy Church; that in the administration of the missions, many frauds have been committed, which every inhabitant of the country laments, and that there are no other means of reanimating the skeleton of a giant, such as the remnant of the ancient missions, except by recurring to experience, and using the levers of the civil and ecclesiastical powers; in view of all of which, and after having duly considered the matter, I have thought proper to determine what is set forth in the following articles.

ART. 1. The government of the department will order the missions of San Diego, San Luis Rey, San Juan Capistrano, San Gabriel, San Fernando, San Buenaventura, Santa Barbara, Santa Cruz, La Purissima, San Antonio, Santa Clara and San José, to be delivered up to the very reverend padres, whom the respective prelate may appoint to each of them. And said missions shall, in future, continue to be administered by the very reverend padres, as tutors to the Indians, in the same manner as they held them formerly.

ART. 2. As policy makes irrevocable what has hitherto been done, the missions will not claim any lands already granted away up to this date; but they will collect the cattle, property and utensils, which may have been lent by the priests or administrators, settling the time and manner in a friendly way with debtors or holders thereof.

ART. 3. They will likewise take care to gather together the dispersed Indians; excepting, first, those legally emancipated by the superior departmental Government; second, those who at the date of this decree are in the service of private persons, it being understood that even both these classes, if they voluntary wish it and prefer returning to their missions, shall be admitted and protected with the knowledge of their masters, and of the reverend missionaries.

ART. 4. The departmental Government, in whose possession the missions have been up to this date, in virtue of the very ample faculties with which it is invested, authorizes the reverend padres

to provide out of the produce of the missions, for the indispensable expenses of the conversion, aliment, clothing, and other temporal necessities of the Indians; and to take from the same funds the moderate part which they may require for their own subsistence, for the economical salary of the mayordomo, and for the maintenance of divine worship, on the condition that they oblige themselves, on their honor and conscience, to deliver to the public treasury (notice first being given to this Government by the reverend padres, and an express order in writing, signed by the undersigned Governor, Commandant General and Inspector) for assistance, aliment, clothing for the troops, and wants of the civil officers, the eighth part of the total annual produce of every description. And they will take care to present, at the end of the year, an exact and true account of the number of neophytes, cattle, property, and all kinds of fruits, or its representative value, belonging to each mission.

ART. 5. The departmental Government which prides itself in being religious, and at the same time entirely Californian, and, as such, interested in the same manner as each and every one of the inhabitants of both Californias, in the progress of the Holy Catholic faith and prosperity of the country, offers all its power for the protection of the missions; and as Commandant General, the force of arms to escort, defend and sustain them, as it will likewise do in respect to individual and particular property and guaranties, securing to the owners thereof, the possession and preservation of the lands which they this day hold; and promises not to make any new grants without the information of said authorities of the reverend padres, notorious unoccupancy, want of cultivation or necessity.

And after, in proof of its validity and solemnity, the original had been signed in this city of Los Angeles of Alta California, by the Reverend Father, President Vicar Foraneo, Fr. Narciso Duran, and as President, the undersigned from the other missions, by the Provisional Secretary, the Chief Clerk of the Office of the Secretary of State, Citizen Francisco Arce, and by the Brigadier General of the Mexican Army, Governor Comandante General and Inspector Manuel Micheltorena.

Wherefore, I order that this be communicated to the Reverend Fathers, to the Señores Prefects, and that it be published as a decree, for the information and the fulfillment thereof by all the

Civil and Military authorities. Given in the City of Los Angeles on the 29th day of May, 1843.

MANUEL MICHELTORENA.

FRANCISCO ARCE,
Provisional Secretary.

FR. JOSE MARÍA DE JESUS GONZALES,
President and Vice-President of the Missions of the North.

FR. JOSE JOAQUIN JIMENO,
President of the Missions of the South.

Despacho del Ministerio de Justicia é Instruccion.

MINISTERIO DE JUSTICIA E INSTRUCCION.

E. S.

Ha llegado á noticia del E. S. Presidente que el Gobierno de ese departamento ha dispuesto sacar á pública subasta todos los bienes pertenecientes á las misiones del mismo, q^{e} el antecesor de V. E. habia mandado devolver á las respectivas misiones p^{a} el manejo y administracion de sus temporalidades; en consecuencia se ha servido prevenirme que ese gobierno se sirva informar sobre estos particulares, suspendiendo desde luego todo procedimiento en cuanto á enagenacion de los bienes de que se trata hasta la resolucion del Supremo Gobierno.

Tengo el honor de decirlo á V. E. con los fines indicados, protestándole mi consideracion y aprecio.

Dios y Libertad, Méjico Noviembre 14 de 1845.

MONTESDEOCA.

E. S. Gobernador del Departamento de California.
PUERTO DE MONTEREY.

TRANSLATION. D.

Dispatch from the Ministry of Justice and Public Instruction.

DEPARTMENT OF JUSTICE AND PUBLIC INSTRUCTION.

Excellent Sir:

His Excellency, the President, has received information that the Government of your Department has ordered that the property belonging to the missions thereof, be put up for sale at public auction, which your Excellency's predecessor had ordered to be returned to the respective missions, for the direction and administration of their temporalities. Therefore he has deemed proper for me to say that the said Government will please to report upon these particulars, suspending immediately all proceedings respecting the alienation of the aforesaid property, till the determination of the Supreme Government. God and Liberty.

MEXICO, November 14, 1845.

I have the honor, &c.,

MONTESDEOCA.

To His Excellency, the Governor of the Department of the Californias.

The foregoing translations, marked A, B, C and D, are correct.

SAN FRANCISCO, ~~July~~ Aug 9th 1876.

E. L. Goold
Attorneys for ~~Appellant~~ Deft in error.

Doyle & Barber
Attorneys for ~~Respondent~~ Deft in error.

SUPREME COURT OF THE UNITED STATES.

FRANCIS MORA,
Respondent.
AGST.
JOHN FOSTER AND OTHERS,
Appellant.

I admit service of the foregoing documents and papers, viz: copy of Pëtition of Francisco Garcia Diego, Bishop, etc., to the Goverment of Mexico, and the response thereto; Act of the Mexican Congress of November 4th, 1835; Proclamation of General Micheltorena of Mar. 29th, 1843; and dispatch from the Ministry of Justice and Public Instruction of Mexico; together with the foregoing translations thereof, marked A, B, C and D. Such copies being furnished to me to be printed as addenda to the record herein, pursuant to stipulation of Oct. 21st, 1875; whereof the foregoing is a copy.

Dated August 9, 1876.

EDMOND L. GOOLD,
Atty. for Plff. in error.